

IN THE SENATE OF THE UNITED STATES.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

IN RESPONSE TO

The Senate resolution of January 3, 1895, transmitting a report from the Secretary of State, with accompanying papers, relating to the delivery by the United States consul at Shanghai of two Japanese citizens to the Chinese authorities, and other information called for in the resolution.

JANUARY 15, 1895.—Ordered to lie on the table and be printed.

To the Senate of the United States:

I transmit a report from the Secretary of State, with accompanying papers, in response to the resolution of the Senate of the 3d instant requesting "all correspondence or other papers relating to the delivery by the United States consul at Shanghai of two Japanese citizens to the Chinese authorities," and information "whether the said Japanese were put to death after being tortured, and whether there was any understanding with the Chinese Government that officers of the United States should aid, assist, and give comfort to any Japanese citizens desiring to leave China, and whether the United States consul at Hankow was reprimanded by Chinese officials for aiding Japanese citizens to leave the country, and whether all information was refused to the United States consul at Ningpo when he made inquiries as to the charges against certain Japanese citizens arrested there."

GROVER CLEVELAND.

EXECUTIVE MANSION,
Washington, January 15, 1895.

The PRESIDENT:

The Secretary of State, to whom was referred a resolution adopted by the Senate on the 3d instant, requesting the President, "if not incompatible with the public interest, to transmit to the Senate all correspondence or other papers relating to the delivery by the United States consul at Shanghai of two Japanese citizens to the Chinese authorities, and also to inform the Senate whether the said Japanese were put to death after being tortured; and whether there was any understanding with the Chinese Government that officers of the United States should

aid, assist, and give safe conduct to any Japanese citizens desiring to leave China; and further to inform the Senate whether the United States consul at Hankow was reprimanded by Chinese officials for aiding Japanese citizens to leave the country, and whether all information was refused to the United States consul at Ningpo when he made certain inquiries as to the charges against certain Japanese citizens arrested there," has the honor to submit the following report with copies of the correspondence relating to the subject:

The treaties between China and Japan being abrogated by the state of war existing between the two countries, the consuls of the one country no longer exercised the powers with which they were invested by the treaties in the territories of the other in time of peace, and the Japanese Government therefore declared, in an imperial ordinance, as one of the first results of the state of war, that Chinese subjects in Japan should be wholly subject to the jurisdiction of the Japanese courts and military authorities. On the return voyage to China from his leave of absence, Minister Denby visited Tokio, and in a conversation between him and Mr. Mutsu, the Japanese minister of foreign affairs, the latter "emphatically repudiated the idea that American consuls could exercise jurisdiction over Chinese in Japan." The abrogation of the treaties was necessarily attended with the same effect upon the status of Japanese subjects in China. Before war was declared, but in anticipation of it and at the solicitation of Japan, our agents in China were instructed to exercise their unofficial good offices in behalf of Japanese subjects in China on all proper occasions and to the full extent allowed by international law, and upon a similar request from China, our agents in Japan were instructed to afford protection to Chinese subjects in Japan in like manner. This, as shown by the annexed correspondence, comprises the extent of the "understanding" relative to protection of Japanese in China.

On the 18th of August, the Chinese minister at this capital complained to the undersigned that the United States consul-general at Shanghai was protecting two Japanese spies who had been arrested in that city, and whose surrender was demanded by the Chinese authorities, in order that they might be dealt with in due course. After proper inquiry into the circumstances of the case, the demand was recognized as lawful, and the men were ordered to be given up. This was not done, however, without proper measures being taken to prevent precipitate or summary action by the Chinese authorities. The undersigned at the same time requested (there was no authority to demand it) that the accused men might not be tried until the return of Minister Denby to Peking, it being supposed that this would afford opportunity for investigation and deliberation. The Chinese minister at once promised compliance, and subsequently informed the undersigned that his Government had acceded to the request. Without questioning the lawfulness of the sentence under laws of war, the undersigned regrets to say that the men were executed about six weeks after their surrender, but before the return of Colonel Denby to China. Special attention is invited to the correspondence on this subject. That the prisoners were not boys, but men and spies in the service of Japan, there is small, if any, room for doubt. Mr. Jernigan, our consul-general at Shanghai, says that when the men were arrested "plans were found on them," and that "the accusing papers are safe." And speaking on the same subject, in a later report, Mr. Jernigan says, "some of the papers found in the possession of the Japanese would naturally, in the state of war now existing, create a suspicion of a character tending to support the alleged charge."

The Chinese minister claims that besides the evidence of guilt found in their possession when arrested, the prisoners admitted, without torture, that they had been employed by their Government to obtain and forward by telegraph and otherwise information useful in conducting military operations against China, and that they had been engaged in that business.

It will not be said by anyone, after reading the accompanying correspondence, that Mr. Jernigan is biased in the slightest degree in favor of the Chinese authorities, and in a report, dated November 2, he says: "The two alleged spies were not executed as soon as handed over, but their cases were under investigation for nearly six weeks, and I am now assured that there was no unfairness practiced against them during the investigation." And in a still later report he states that "a letter from an intelligent foreigner residing at Nanking, where the two Japanese were executed, discredits the reports of their torture. Other letters from the same gentleman have proved so accurate that I am disposed to accept the reported torture as without substantial proof." The Chinese Government denies that the men "were put to death after being tortured," and the Department is not advised that they were tortured.

Of the decision that the prisoners were not subject to the jurisdiction of the consul-general of the United States at Shanghai and that he could not give them asylum, the Japanese Government made no complaint. On the contrary, the Japanese minister at this capital informed the undersigned that in the opinion of his Government neither our consular representative at Shanghai, nor any other agent of this Government in China, was authorized to hold the two men against the demand of the Chinese authorities, and that, under similar circumstances, his Government would expect the surrender of Chinese subjects in Japan.

Spying in time of war is a purely military offense, not cognizable by civil tribunals, and to have held the accused, against the demand of the Chinese Government, either for trial by our consul-general or before a mixed tribunal of foreign and Chinese officials, would have been inconsistent with our assumed attitude of impartial neutrality. Our agents in China were not substituted for the withdrawn agents of Japan, and this Government could not invest Japanese in China with an extraterritoriality which they did not possess as subjects of their own sovereign.

Mr. Denby, jr., our chargé at Peking, in a dispatch dated September 4 reported the Chinese authorities at Hankow had complained that the American consul at that place had protected a Japanese subject seen beyond the limits of the foreign concession in Chinese costume, by shipping him to Shanghai. Without demanding this man, the authorities requested that our consuls be directed not to protect such persons in future. The Department is not informed that "the United States consul at Hankow was reprimanded for aiding Japanese citizens to leave the country." From a telegram addressed to Mr. Denby, jr., August 26, by Mr. Fowler, our consul at Ningpo, it appears that a Japanese was arrested in the dress of a Chinese priest at Chinhai, 20 miles from the Ningpo foreign settlement. In his report to Mr. Denby Mr. Fowler says:

"Wrote for facts. Taotai replied, giving circumstances and trial. Evidence weak and ex parte. Requested delay punishment few days. Just received reply—none of my business. Will not answer further dispatches on subject. Shall demand delay."

Mr. Fowler seems not to have understood the nature of the protection he was authorized to afford Japanese within reach of his consulate, and it does not appear from his own language, or from any other correspondence, that he was denied information which he was entitled to receive.

The dispatches sent to the Department by Colonel Denby after his return to Peking show that he correctly understood the extent to which our agents in China were expected to afford protection to Japanese in that country during the pendency of hostilities.

Respectfully submitted.

W. Q. GRESHAM.

DEPARTMENT OF STATE,

Washington, January 15, 1895.

List of papers.

1. Mr. Denby, chargé, to Mr. Gresham, telegram, July 24, 1894.
2. Mr. Gresham to Mr. Denby, chargé, telegram, July 26, 1894.
3. Mr. Gresham to Mr. Dun, telegram, July 26, 1894.
4. Mr. Denby, chargé, to Mr. Gresham, July 27, 1894.
5. Mr. Denby, chargé, to Mr. Gresham, July 31, 1894.
6. Mr. Gresham to Mr. Dun, telegram, August 3, 1894.
7. Mr. Denby, chargé, to Mr. Gresham, August 8, 1894.
8. Mr. Denby, chargé, to Mr. Gresham, August 14, 1894.
9. Mr. Gresham to Mr. Denby, chargé, telegram, August 18, 1894.
10. Mr. Jernigan to Mr. Uhl, August 21, 1894.
11. Mr. Denby, chargé, to Mr. Gresham, telegram August 21, 1894.
12. Mr. Gresham to Mr. Denby, chargé, telegram, August 21, 1894.
13. Mr. Gresham to Mr. Denby, chargé, telegram, August 23, 1894.
14. Mr. Denby, chargé, to Mr. Gresham, telegram, August 26, 1894.
15. Mr. Denby, chargé, to Mr. Gresham, August 27, 1894.
16. Mr. Denby, chargé, to Mr. Gresham, telegram, August 27, 1894.
17. Mr. Gresham to Mr. Denby, chargé, telegram, August 29, 1894.
18. Mr. Gresham to Mr. Denby, chargé, August 29, 1894.
19. Mr. Gresham to Mr. Dun, August 29, 1894.
20. Mr. Denby, chargé, to Mr. Gresham, telegram, August 31, 1894.
21. Mr. Gresham to Mr. Denby, chargé, telegram, August 31, 1894.
22. Mr. Uhl to Mr. Dun, September 1, 1894.
23. Mr. Denby, chargé, to Mr. Gresham, September 1, 1894.
24. Mr. Dun to Mr. Gresham, September 1, 1894.
25. Mr. Jernigan to Mr. Uhl, telegram, September 3, 1894.
26. Mr. Child to Mr. Uhl, September 3, 1894.
27. Mr. Denby, chargé, to Mr. Gresham, September 4, 1894.
28. Mr. Denby, chargé, to Mr. Gresham, September 8, 1894.
29. Mr. Gresham to Mr. Denby, chargé, September 18, 1894.
30. Mr. Jernigan to Mr. Uhl, September 21, 1894.
31. Mr. Gresham to Mr. Dun, September 22, 1894.
32. Mr. Jernigan to Mr. Uhl, telegram, October 9, 1894.
33. Mr. Jernigan to Mr. Uhl, October 9, 1894.
34. Mr. Gresham to Mr. Denby, chargé, October 20, 1894.
35. Mr. Denby, chargé, to Mr. Gresham, October 22, 1894.
36. Mr. Jernigan to Mr. Uhl, October 22, 1894.
37. Mr. Gresham to Mr. Denby, chargé, October 23, 1894.
38. Mr. Dun to Mr. Gresham, October 23, 1894.
39. Mr. Gresham to Mr. Denby, chargé, October 30, 1894.
40. Mr. Denby, minister, to Mr. Gresham, October 30, 1894.
41. Mr. Adee to Mr. Dun, November 1, 1894.
42. Mr. Jernigan to Mr. Uhl, November 2, 1894.
43. Mr. Denby, minister, to Mr. Gresham, November 5, 1894.
44. Mr. Denby, minister, to Mr. Gresham, November 6, 1894.
45. Mr. Jernigan to Mr. Uhl, telegram, November 24, 1894.
46. Mr. Jernigan to Mr. Uhl, November 26, 1894.
47. Mr. Gresham to Mr. Yang Yü, November 30, 1894.
48. Mr. Yang Yü to Mr. Gresham, December 6, 1894.
49. Mr. Gresham to Mr. Yang Yü, December 27, 1894.
50. Mr. Yang Yü to Mr. Gresham, December 31, 1894.

No. 1.

Mr. Denby, chargé, to Mr. Gresham.

[Telegram.]

PEKING, July 24, 1894.

Have received a telegram from the United States minister at Japan with reference to taking Japanese citizens under the protection of the United States in case of war. Chinese Government has given consent and asks the United States to protect Chinese in Japan. A reply is requested.

No. 2.

Mr. Gresham to Mr. Denby, chargé.

[Telegram.]

DEPARTMENT OF STATE,
Washington, July 26, 1894.

China acceding, you may act as custodian Japanese legation and afford friendly offices for protection Japanese subjects in China, either directly or through consuls acting under your instructions, but you will not represent Japan diplomatically.

No. 3.

Mr. Gresham to Mr. Dun.

[Telegram.]

DEPARTMENT OF STATE,
Washington, July 26, 1894.

Japan acceding, you may act as custodian Chinese legation and afford friendly offices for protection Chinese subjects in Japan either directly or through consuls acting under your instructions, but you will not represent China diplomatically.

No. 4.

Mr. Denby, chargé, to Mr. Gresham.

LEGATION OF THE UNITED STATES,
Peking, July 27, 1894. (Received September 11.)

SIR: I have the honor to report that the Japanese chargé d'affaires at Peking has made all his arrangements for placing under the protection of the United States the interests of the subjects of Japan in China, immediately upon the outbreak of hostilities between these two countries.

In that event all Japanese residing or traveling in the interior are to be recalled to the treaty ports. The Japanese consuls and all the members of the legation are to be withdrawn, and the care of the

legation and consulates and the protection of Japanese subjects are to be left to the officials of the United States.

In view of the fact that the assistance of our consuls will be more in demand by Japanese immediately upon the declaration of war than later, and in view of the fact that it would be difficult and expensive to give them proper instructions by telegraph at the last moment, I have considered it advisable to notify them by circular, in advance, that our Government has undertaken, in case of war, to protect the subjects of Japan in Chinese territory. A copy of this circular was mailed yesterday to each of the consuls of the United States in this country, and I have the honor to inclose a copy herewith. It will now only be necessary to advise them by telegram of a declaration of war. I have made an arrangement for the transmission of these telegrams, should they become necessary, through the consulate general at the least expense.

I have, etc.,

CHAS. DENBY, Jr.,
Chargé d'Affaires ad interim.

[Inclosure in No. 4.—Confidential.]

Mr. Denby, chargé, to United States consular officers in China.

LEGATION OF THE UNITED STATES,
Peking, July 26, 1894.

SIR: At the request of Japan, and with the consent of China, the United States Government has agreed, in event of war between those two powers, to take under its protection all Japanese subjects residing in Chinese territory.

Under these circumstances it will be your duty on receipt of telegraphic advice from this legation that hostilities have begun, to give every proper assistance consistent with the functions with which you are charged and the discharge of your own duties to the subjects of Japan within your jurisdiction.

I am, etc.,

CHAS. DENBY, Jr.,
Chargé d'Affaires ad interim.

No. 5.

Mr. Denby, chargé, to Mr. Gresham.

LEGATION OF THE UNITED STATES,
Peking, July 31, 1894. (Received September 12.)

SIR: Much misapprehension seeming to exist in the minds of the United States consuls in China as to the scope of their duties as to the protection of Japanese subjects in China, in case of war, and application having been made to me for further instructions on the subject, I have considered it desirable to inform them, somewhat more in detail than was done in my circular of the 26th instant, of what would be expected of them. I inclose herewith a copy of a circular which I have this day mailed to the consuls at the various ports.

I have, etc.,

CHARLES DENBY, Jr.

[Inclosure in No. 5.—Circular.]

Mr. Denby, chargé, to United States consular officers in China.

Confidential.]

LEGATION OF THE UNITED STATES,
Peking, July 31, 1894.

SIR: This legation having been requested to state more specifically what will be the duties of the United States consuls as to the protection of Japanese in case of war, I have the honor to give you further instructions as follows:

In such an event, on receipt of notice from this legation, you will exert your good offices for the protection of Japanese *subjects* in your vicinity, such action on your part to be as *consul of the United States*, and in no respect as representing Japan, and to be strictly confined to such acts as are proper for a consul of a power friendly to and at peace with China. You may, if requested, become custodian of the Japanese consulate and take charge of the archives. It will not, however, be proper to raise the American flag on such buildings. It will not be necessary to make any official announcement of your attitude toward the citizens of Japan. Such notice will be given through the proper authorities at Peking. Your duties will be confined to the *protection* of Japanese subjects only; you will not be charged with any Japanese consular functions or authority.

I have the honor to be, sir, your obedient servant,

CHAS. DENBY, Jr.,
Chargé d'Affaires ad interim.

No. 6.

Mr. Gresham to Mr. Dun.

[Telegram.]

DEPARTMENT OF STATE,
Washington, August 3, 1894.

Our minister to China was promptly instructed to exercise good offices for Japan, as requested, and he has informed the Department that he is doing so.

No. 7.

Mr. Denby, chargé, to Mr. Gresham.

LEGATION OF THE UNITED STATES,
Peking, August 8, 1894. (Received September 22.)

SIR: On the 6th instant the prince and ministers wrote to this legation, stating that they were informed that Japanese spies had been sent into the interior of China in disguise, and announced their intention of dealing severely with them if apprehended.

In replying to this dispatch, I considered it my duty to urge the Chinese Government to proceed with moderation and to be influenced rather by motives of humanity than by bitterness toward Japan.

I have, etc.,

CHAS. DENBY, Jr.

[Inclosure 1 in No. 7.]

The Tsung-li Yamen to Mr. Denby, chargé.

AUGUST 6, 1894.

As Japan has commenced hostilities, all Japanese merchants and others residing in China have been placed under the protection of the United States Government. The prince and ministers, on receiving, some time ago, a communication from the chargé d'affaires of the United States on the subject, addressed the high officers of the various provinces, and also sent a reply to the chargé d'affaires.

The yamen have now received a telegram from the minister superintendent of northern trade to the effect that some twenty or thirty Japanese have been deputed from Tientsin as spies. They have changed their dress and shaved their heads and made their way secretly to various places for the purpose of prying into the condition of our military affairs.

By the rules laid down in international law, paragraphs 627 and 641, the most severe punishment is meted out to military spies. As relations of friendship have been broken off and war exists at the present time between China and Japan, merchants and others, natives of Japan, who are peacefully pursuing their vocations, will be protected as provided by treaty, but military spies do not come within the rule of being entitled to protection, and the most severe punishment will be inflicted upon them, as provided by international law.

The yamen have addressed the Tartar generals, governors-general, and governors of the various provinces to take strenuous measures to secretly apprehend all who are engaged as spies, and, as in duty bound, the prince and ministers send this communication for the information of the chargé d'affaires of the United States.

[Inclosure 2 in No. 7.]

Mr. Denby, chargé, to the Tsung-li Yamen.

AUGUST 8, 1894.

YOUR HIGHNESS AND YOUR EXCELLENCIES: I have the honor to acknowledge the receipt of your dispatch of the 6th instant, with reference to the reported presence of Japanese spies in the interior of China, engaged in gaining information as to the military affairs of the country.

Should Japanese be found in the interior under such circumstances as to excite suspicion as to their character, it is to be hoped that a most careful examination will be made and every opportunity given them to prove their innocence before any action is taken against them. In such matters it would be easy to make mistakes whose consequences would be much to be regretted.

As there are no armed forces of Japan within Chinese territory, and as the war is being conducted entirely abroad, the infliction of extreme penalties would be unjustifiable. I respectfully suggest to your highness and your excellencies that the safety of China would be sufficiently guarded and sufficient punishment inflicted on Japanese found unlawfully or in disguise within the interior if they were taken to the nearest seaport and transported to their own country. I hope that your high-

ness and your excellencies will be guided in this matter by humane motives and not allow your action to be influenced by feelings of bitterness toward Japan.

I avail, etc.,

CHAS. DENBY, Jr.

No. 8.

Mr. Denby, chargé, to Mr. Gresham.

LEGATION OF THE UNITED STATES,
Peking, August 14, 1894. (Received October 1.)

SIR: In my dispatch of the 8th instant I inclosed a copy of a dispatch from the yamen with reference to the treatment of Japanese spies seized in China, and a copy of my reply thereto in which I recommended that such spies be punished by being transported to Japan.

Under date of the 12th instant the yamen writes, saying that the suggested punishment seems inadequate and that China will be obliged to act more severely for her own defense. The ministers renew their promise of protection of peaceable Japanese, and assert that they are not influenced by any feelings of bitterness toward Japan.

My motive in counseling leniency is to prevent conviction on insufficient evidence and to prevent unnecessarily cruel treatment of any Japanese, really guilty, who may be seized. This sentiment is a natural one, in view of the horrible cruelties and tortures recognized by the Chinese criminal code.

Some days ago at Tientsin, a Japanese, who was supposed to have left the city, was arrested under suspicious circumstances. He was coming at night from the house of the chief secretary of Director Chang, of the ordnance department. It is charged that he was in the habit of procuring military and naval intelligence by bribery. I advised the United States consul that it would be proper for him to request the Chinese authorities, as a courtesy, to inform him of such arrests and of the outcome of the examination.

I have, etc.,

CHAS. DENBY, Jr.,
Chargé d'Affairs ad interim.

No. 9.

Mr. Gresham to Mr. Denby, chargé.

[Telegram.]

DEPARTMENT OF STATE,
Washington, August 18, 1894.

Chinese minister complains that United States consul at Shanghai is protecting Japanese spies. Report immediately and fully.

No. 10.

Mr. Jernigan to Mr. Uhl.

CONSULATE-GENERAL OF THE UNITED STATES,
Shanghai, China, August 21, 1894. (Received September 22.)

SIR: I have the honor to report that on the 2d I received from the legation at Peking a telegram of the 1st, informing me of the declaration of war between China and Japan, with instructions that the United States had undertaken the protection of Japanese interest in China.

On the same day the Japanese consul-general at this port addressed to me an official communication on the subject, and requested one of my flags to fly from his consular pole. He communicated to me that the request was made under instructions from his minister at Tokyo, Mr. Mutsu.

The wires from Shanghai to Peking had stopped working, and it requires about ten days for a letter to reach Peking, and this denied me the instructions of the legation for the time, and I answered without instructions.

I informed the Japanese consul-general that, upon general principles, I did not understand that the functions of his office would be continued in me; that I could not, in the absence of special instructions, assume to exercise any of his consular functions, for they ended with the declaration of war, and that the use of my flag, as proposed, could not be granted, for it might have the tendency of an unfriendly import to China, was unusual, and besides, it was not necessary for the United States to accent any declaration they might make, for it would be respected anyhow.

He then asked me what I conceived to be the character of the new duties devolved upon me.

I replied that such of his countrymen as desired to remain in China to pursue their peaceful business vocations would be protected by my Government, and if molested that I would feel it my duty to promptly bring the matter to the attention of the Chinese Government, and if charged with an offense, to intervene to the extent of having the charges intelligently made before the proper court.

He asked me if his countrymen in China were under American law; I answered that they were not under American law as an American citizen would be, nor could Japanese be tried in the court of this consulate-general.

It was somewhat difficult to make the scope of my meaning clear, until I pointed out to the Japanese consul-general the inconsistency of taking down his flag and continuing the functions of his office under my flag.

Subsequently I have received the legation's circular, and was gratified that I had kept within instructions.

At the time of the declaration of war there were about one thousand Japanese at this port, scattered over the city, and engaged in various business vocations. This number was greatly augmented by the coming here of nearly every Japanese at the other treaty ports. This being the larger and better protected, all came here.

Within the last two weeks many have returned to Japan, though there are still here as many as 800.

The intense bitterness between China and Japan emphasizes the complications that may arise here at any moment, and my first step was to invite to my office the manager of a branch of the Japan Bank

and four other Japanese well known and respected in business circles. These readily agreed to constitute a consulting committee, through which I could reach their countrymen, and to aid me in getting as many of their countrymen to go to Japan as could without serious injury to their business.

Thus far the plan has worked favorably, but you will appreciate, with a knowledge of Asiatic races, the delicacy of my position.

I will do my best, believing that you will view liberally my mistakes.

The subtle diplomacy of Asia is more successfully opposed by simplicity and firmness.

I send our minister at Peking all the reliable war news I receive. China and Japan appear very determined.

I am, etc.,

T. R. JERNIGAN, *Consul-General.*

No. 11.

Mr. Denby, chargé, to Mr. Gresham.

[Telegram.]

PEKING, *August 21, 1894.*

I have received your cipher telegram. According to the yamen statement, prefect of Shanghai on the thirteenth saw in the French concession two Japanese wearing Chinese clothing, and securing arrest by the French consul, plans were found upon them. French consul delivered them to the consul-general of the United States, who refused to give them up without definite instructions of legation of the United States. Yamen requested their delivery. I replied I could not act until the United States consul-general has reported. The United States consul-general telegraphs accused asked for asylum until the case investigated. Was granted with this understanding, that status quo shall be maintained. Accusing papers safe. Important principle involved. The rights of China doubted. The United States consul-general urges the legation to await written report, expected to arrive to-morrow. I have assured yamen of impartiality and request delay. On receiving report of United States consul-general will telegraph.

No. 12.

Mr. Gresham to Mr. Denby, chargé.

[Telegram.]

WASHINGTON, *August 21, 1894.*

Telegram 21st received. Was French consul required to surrender the two Japanese in French concession at Shanghai on demand of Chinese authorities? If so, why did he deliver them to United States consul-general? Our legation and consulates in China are not authorized to hold Japanese accused of crime against the demand of Chinese authorities.

No. 13.

Mr. Gresham to Mr. Denby, chargé.

[Telegram.]

DEPARTMENT OF STATE,
Washington, August 23, 1894.

Anxiously awaiting reply to my telegram 21st. Are the two Japanese still held by our consul-general at Shanghai; and, if so, why?

No. 14.

Mr. Denby, chargé, to Mr. Gresham.

[Telegram.]

PEKING, August 26, 1894.

Received telegram 21st and 23d, unfortunately the latter one last. Under the international rule in the Shanghai settlements French consul had not the right to surrender Japanese to Chinese officials. Arrests can only be made on the concessions by order of consuls. Chinese arrested tried by the mixed court; foreigners delivered to their consuls. Japanese were delivered to the United States consul-general because the United States protects the interests of Japanese. The United States consul-general reports alleged spies mere school boys, peacefully and openly living at Shanghai. I request that I be directed to order examination by the United States consul-general with Chinese official present. China should not be allowed to inflict barbarous treatment, if guilty.

No. 15.

*Mr. Denby, chargé, to Mr. Gresham.*LEGATION OF THE UNITED STATES,
Peking, August 27, 1894. (Received October 11.)

SIR: On the 26th instant I received from Mr. Fowler, United States consul at Ningpo, a telegram as follows:

"Monday learned military arrested Sunday Chinhai as spy. Japanese dressed (as) priestly passenger. Morning wrote for facts. Taotai replied, giving circumstances and trial. Evidence weak and ex parte. Requested delay punishment few days. Just received reply—none of my business; will not answer further dispatches on subject. Shall demand delay. Await your instructions."

To this I replied in cipher as follows:

"Gresham's orders positive. Consuls can not protect Japanese accused of crime.¹ You may use friendly offices to secure fair trial; if refused, no alternative."

Chinhai is a town at the mouth of the river leading to Ningpo, about 20 miles therefrom, and within the fortifications which guard the entrance. For a Japanese to present himself in disguise, in that local-

¹See No. 12.

ity, is a proof of illicit intentions or of extreme foolhardiness. The treaties between China and Japan provide that Japanese in this country shall not wear the Chinese dress. It would seem that what is unlawful in time of peace should be the more avoided in time of war.

The question of Japanese in China in disguise is a serious one. There are doubtless many of them. One has been seized at Tientsin, two at Shanghai, one at Nankin, and now one near Ningpo. Japanese engaged in making unlawful investigations in China can not occupy a better position than active belligerents. They can not claim the intervention of the United States if seized by Chinese authorities, away from foreign concessions, upon reasonable grounds of suspicion. The duty of United States consuls can go no further than to make an effort to secure their fair trial. Humanity would also dictate that protest be made against torture or barbarous punishment.

If Japanese accused of crime take refuge with or are delivered to United States authorities, this legation will, until otherwise instructed, consider it lawful to retain possession of them until reasonable proofs of guilt have been adduced. Though China is at war with Japan, Japanese have the Chinese Government's express permission to reside here, and should be protected from causeless persecution at the hands of subordinate officials.

In this sense I have written to Mr. Fowler.

I have, etc.,

CHAS. DENBY,
Chargé d'Affaires ad interim.

No. 16.

Mr. Denby, chargé, to Mr. Gresham.

[Telegram.]

PEKING, August 27, 1894.

The consul-general of the United States telegraphs alleged two spies have resided three years as students. The papers in their possession such as intelligent students might prepare for personal information. Suggest consuls of the United States shall act as arbitrators. I state many Japanese have worn Chinese clothing without objection, though contrary to treaty.

No. 17.

Mr. Gresham to Mr. Denby, chargé.

[Telegram.]

WASHINGTON, August 29, 1894.

You and consul-general at Shanghai seem to misapprehend nature of protection authorized. Lending good offices does not invest Japanese with extraterritoriality nor should legation or consulates be made asylum for Japanese who violate local laws or commit belligerent acts. Protection to be exercised unofficially and consistently with neutrality.

¹This was also sent by telegraph on August 29 to Minister Dun at Tokyo for his information.

Consul-general should not have received two Japanese, and is not authorized to hold them. Your suggestion that our consuls act as arbitrators not entertained.

No. 18.

Mr. Gresham to Mr. Denby, chargé.

DEPARTMENT OF STATE,
Washington, August 29, 1894.

SIR: The action of the Government of Japan, in committing the interests of its subjects in China to the care of the diplomatic representative of the United States during the existence of hostilities between China and Japan, renders it expedient that you should be instructed as to the nature of your duties in the delicate situation in which you are thus placed.

The Japanese Government, when it solicited the interposition of our diplomatic representative in China in behalf of Japanese subjects during hostilities, was informed that such interposition would be permitted with the consent of the Chinese Government. Such consent has been given. Moreover, the diplomatic representative of the United States at Tokio has, at the request of the Chinese Government, and with the consent of the Government of Japan, been charged with the care of the interests of Chinese subjects in the latter country pending hostilities.

The function with which you are thus charged, with the consent of the Government to which you are accredited, is one that calls for the exercise of personal judgment and discretion. It is an unofficial, not an official, function. A minister of the United States can not act officially as the diplomatic representative of another power, such an official relation being prohibited by the Constitution of the United States. But, apart from this fact, the circumstances under which the function in question is to be discharged imply personal and unofficial action. The state of war into which China and Japan have entered is inconsistent with the continuance of diplomatic intercourse between them. Your position is that of the representative of a neutral power, whose attitude towards the parties to the conflict is that of impartial amity. Your interposition in behalf of the subjects of one of them is not to be considered as an act of partisanship, but as a friendly office performed in accordance with the wishes of both parties. This principle you are constantly to bear in mind, in order that, while doing what you can consistently with international law for the protection of the interests of Japanese subjects in China, you may not compromise our position as a neutral.

By consenting to lend its good offices in behalf of Japanese subjects in China, this Government can not assume to assimilate such subjects to citizens of the United States, and to invest them with an extraterritoriality which they do not enjoy as subjects of the Emperor of Japan. It can not assume to hold them amenable to the laws of the United States or to the jurisdiction of our minister or consuls; nor can it permit our legation or our consulates to be made an asylum for offenders against the laws from the pursuit of the legitimate agents of justice. In a word, Japanese subjects in China continue to be the subjects of their own sovereign and answerable to the local law to the same extent

as heretofore. The employment of good offices in their behalf by another power can not alter their situation in this regard.

On several proper occasions the Government of the United States has permitted its diplomatic and consular representatives to exercise their good offices in behalf of the citizens or subjects of a third power, as in Mexico in 1867 and in the Franco-German war in 1870. For many years good offices have been exercised by our diplomatic and consular representatives in behalf of citizens of Switzerland in China, as well as in other countries, where the Swiss Republic is without such representatives. In this relation it is proper to refer to an instruction of this Department to its diplomatic representative in China, of July 25, 1872, in which the protection to be extended by our minister and consuls to Swiss citizens in that country is defined as follows:

"The protection referred to must necessarily be confined to the personal and unofficial good offices of such functionaries. Although when exercised to this extent merely, this can properly be done only with the consent of the Chinese Government, that consent must not be allowed to imply an obligation on the part of a diplomatic or consular officer of the United States in that country to assume criminal or civil jurisdiction over Swiss citizens, or to make himself or his Government accountable for their acts."

But, while you are to act unofficially, you will carefully examine any complaints that may be laid before you in behalf of Japanese subjects, and make such representations to the Chinese Government as the circumstances may be found to warrant; and in all ways you will do what you can, consistently with the principles heretofore stated, for the protection of Japanese subjects in China, and their interests.

I am, etc.,

W. Q. GRESHAM.

No. 19.

Mr. Gresham to Mr. Dun.

DEPARTMENT OF STATE,
Washington, August 29, 1894.

SIR: The action of the Government of China, in committing the interests of its subjects in Japan to the care of the diplomatic representative of the United States during the existence of hostilities between Japan and China, renders it expedient that you should be instructed as to the nature of your duties in the delicate situation in which you are thus placed.

The Chinese Government, when it solicited the interposition of our diplomatic representative in Japan in behalf of Chinese subjects during hostilities, was informed that such interposition would be permitted with the consent of the Japanese Government. Such consent has been given. Moreover, the diplomatic representative of the United States at Peking has, at the request of the Japanese Government, and with the consent of the Government of China, been charged with the care of the interests of Japanese subjects in the latter country pending hostilities.

The function with which you are thus charged, with the consent of the Government to which you are accredited, is one that calls for the exercise of personal judgment and discretion. It is an unofficial, not

an official, function. A minister of the United States can not act officially as the diplomatic representative of another power, such an official relation being prohibited by the Constitution of the United States. But apart from this fact, the circumstances under which the function in question is to be discharged imply personal and unofficial action. The state of war into which Japan and China have entered is inconsistent with the continuance of diplomatic intercourse between them. Your position is that of the representative of a neutral power, whose attitude toward the parties to the conflict is that of impartial amity. Your interposition in behalf of the subjects of one of them is not to be considered as an act of partisanship, but as a friendly office performed in accordance with the wishes of both parties. This principle you are constantly to bear in mind, in order that, while doing what you can consistently with international law for the protection of the interests of Chinese subjects in Japan, you may not compromise our position as a neutral.

By consenting to lend its good offices in behalf of Chinese subjects in Japan, this Government can not assume to assimilate such subjects to citizens of the United States, and to invest them with an extraterritoriality which they do not enjoy as subjects of the Emperor of China. It can not assume to hold them amenable to the laws of the United States or to the jurisdiction of our minister or consuls, nor can it permit our legation or consulates to be made an asylum for offenders against the laws from the pursuit of the legitimate agents of justice. In a word, Chinese subjects in Japan continue to be the subjects of their own sovereign, and answerable to the local law to the same extent as heretofore. The employment of good offices in their behalf by another power can not alter their situation in this regard.

On several prior occasions the Government of the United States has permitted its diplomatic and consular representatives to exercise their good offices in behalf of the citizens or subjects of a third power, as in Mexico in 1867, and in the Franco-German war in 1870. For many years good offices have been exercised by our diplomatic and consular representatives in behalf of citizens of Switzerland in China, as well as in other countries where the Swiss Republic is without such representatives. In this relation it is proper to refer to an instruction of this Department to its diplomatic representative in China, of July 25, 1872, in which the protection to be extended by our minister and consuls to Swiss citizens in that country is defined as follows:

"The protection referred to must necessarily be confined to the personal and unofficial good offices of such functionaries. Although when exercised to this extent merely this can properly be done only with the consent of the Chinese Government, that consent must not be allowed to imply an obligation on the part of a diplomatic or consular officer of the United States in that country to assume criminal or civil jurisdiction over Swiss citizens, or to make himself or his Government accountable for their acts."

But, while you are to act unofficially, you will carefully examine any complaints that may be laid before you in behalf of Chinese subjects, and make such representations to the Japanese Government as the circumstances may be found to warrant; and in all ways you will do what you can, consistently with the principles heretofore stated, for the protection of Chinese subjects in Japan and their interests.

I am, etc.,

W. Q. GRESHAM.

No. 20.

Mr. Denby, chargé, to Mr. Gresham.

[Telegram.]

PEKING, August 31, 1894.

I have received your cipher telegram, 29th. The United States minister to Japan telegraphs that Japanese Government assures two Japanese are not spies. Japanese Government requests China to take no action until Minister Denby arrives. Will you authorize me to make the proposition to the Chinese Government, or do you order immediate unconditional surrender to Chinese Government?

No. 21.

Mr. Gresham to Mr. Denby, chargé.

[Telegram.]

DEPARTMENT OF STATE,
Washington, August 31, 1894.

Your telegram this date received. My instructions 29th clear.

No. 22.

Mr. Uhl to Mr. Dun.

DEPARTMENT OF STATE,
Washington, September 1, 1894.

SIR: I have to acknowledge receipt of yours of the 31st of July, with which was inclosed copy of your instruction to the United States consuls in Japan to use their good offices to protect Chinese subjects in Japan.

Mr. Gresham's telegraphic instruction, sent to you on the 29th ultimo and confirmed in mine of the 31st ultimo, will suggest to you the proper limitation to be set to the exercise of the unofficial good offices of our consuls as the representatives of a friendly power and not as charged with Chinese consular functions.

I am, etc.,

EDWIN F. UHL.

No. 23.

Mr. Denby, chargé, to Mr. Gresham.

LEGATION OF THE UNITED STATES,
Peking, September 1, 1894. (Received October 11.)

SIR: I have the honor to confirm your telegram of the 31st ultimo, as follows:

"Your telegram this date received. My instruction 29th clear."

Immediately upon receipt of this telegram I wired the consul-general to deliver the alleged Japanese spies held by him to the taotai, and I

S. Ex. 36—2

notified the yamen that this had been done. I have now the honor to submit some remarks in explanation of my action and of the action of the consul-general in this matter.

To the first demand of the yamen, made on the 16th ultimo, that these Japanese be given up, I replied that I would be compelled to await the consul-general's report. This I telegraphed him to forward. Before Mr. Jernigan had reported the yamen referred the case to you, and to their subsequent demands I replied that they had put the matter in your hands and that I could now only act as ordered by you. It would have been manifestly improper for me to order Mr. Jernigan to give up these Japanese without hearing from him the reasons which had induced him to detain them. Subsequently, when the case had been appealed to you, it would have been equally improper to give them up without your orders.

Mr. Jernigan has not acted in this matter under a misapprehension as to his authority. Neither he nor I imagine that lending good offices invests Japanese in China with extraterritoriality, nor that the legation or the consuls have the right to shield Japanese who commit crimes. No attempt has been made to harbor Japanese in other parts of China, though many occasions for doing so have presented themselves. The case of the two Japanese arrested at Shanghai is an exceptional one. On two grounds I felt justified in asking your instructions.

In the first place, the exclusive jurisdiction of the Chinese authorities over subjects of a power at war with China resident in the foreign settlements at Shanghai is sufficiently in doubt to justify the foreign authorities in demanding proof of guilt and stipulating for a fair trial before giving up such subjects when accused. The custom in time of peace is for foreigners residing at Shanghai, subjects of a power having no treaty with China and hence not enjoying the privileges of extraterritoriality, to be tried, when arrested for crime, by the "mixed court," that is, by a Chinese magistrate sitting with a foreign "assessor" on the French concession. This assessor is always a French consular officer. On the Anglo-American settlement an English assessor sits with the Chinese official on Mondays, Wednesdays, and Fridays; an American assessor on Tuesdays and Thursdays, and a German assessor on Saturdays. Before this tribunal are brought all Chinese charged with crimes or misdemeanors in the settlement, and all foreigners so charged not protected by treaty. They are heard and their punishment determined by the Chinese and foreign officials acting together.

The foreigners at Shanghai wish to establish the principle that this procedure shall be followed in time of war against subjects of a belligerent power. They are strongly averse to establishing the precedent that China shall have exclusive jurisdiction over such persons. This aversion is based on a desire to preserve the neutrality of the settlements and on an abhorrence of the cruel barbarities of Chinese criminal procedure. They justly argue that if Japanese are allowed to be taken from the concession and dealt with at the will of China, then, in case of war between the United States and China, Americans may be similarly treated. So far as any precedent already exists, it is adverse to such right of China. During the Franco-Chinese war Russia used her good offices for the protection of the French in China and French subjects arrested at Shanghai were actually brought before the Russian consul for hearing. China made no effort to interfere with them in any way.

The second reason for which deliberation and caution seemed justified is based upon humanity. The two Japanese seized at Shanghai are

school boys. For three years they have resided in the French concession peacefully and openly. They give the name of the school, the teacher, and the place of their residence, with a minuteness which raises doubts in their favor. They are probably innocent. The Chinese authorities assert that their wearing the Chinese costume is a proof of guilt. To this it is only necessary to reply that they had been wearing it for years. Japanese clad as Chinese have been living all over the Empire; I have met them in Peking. Though contrary to treaty no objection has been made thereto.

To give up these boys unconditionally is generally believed to be to give them up to death. The viceroy at Nankin has, I am informed, already demanded of the taotai of Shanghai why the heads of the two spies have not been sent to him. They are judged and condemned in advance. The governor of Formosa has posted a proclamation offering prizes for Japanese heads. In a country where such a thing is possible it is needless to inquire what chance a Japanese accused as a spy would have for his life.

It was never my intention to ultimately refuse to give up these Japanese. I only wished your authorization to stipulate for their examination in the presence of the consul-general, and an assurance that torture or excessive punishment should not be inflicted on them.

To demand from China these concessions from her legal rights seemed justifiable and if pressed she would have consented to them.

Such concessions would have been to her advantage. This case has attracted much attention in Japan. The American minister at Tokyo telegraphed this legation that these men were innocent. Should any harm befall them retaliation is inevitable. These young men have the fullest sympathy of all foreigners in China, and the advice of the high officials of all nationalities has been not to give them up without conditions. The knowledge of this fact may prevent their execution.

For the considerations above set forth, I did not presume to act without giving you the fullest information on the case and without your instructions. I have not acted with any partiality toward the Japanese, nor with any misapprehension as to my authority, but have tried, in a difficult emergency, to act as justice dictated.

I have, etc.,

CHAS. DENBY, Jr.,
Chargé d'Affaires ad interim.

No. 24.

Mr. Dun to Mr. Gresham.

LEGATION OF THE UNITED STATES,
Tokyo, Japan, September 1, 1894. (Received September 22.)

SIR: On the 27th ultimo I received from Mr. Jernigan, United States consul-general at Shanghai, a telegram to the effect that two Japanese, accused by the Chinese authorities of being spies, were at that time in his consulate; that the alleged spies were boys; that they had been students at Shanghai for three years, and that they had papers in their possession such as any intelligent boys might have. Mr. Jernigan requested me to act promptly in behalf of the accused young men.

I felt that it was difficult for me to do anything in the matter. However, I called at the foreign office here and ascertained that the young

men in question were, as stated by Mr. Jernigan, students, and was assured by Mr. Hayashi, vice-minister for foreign affairs, that they were entirely guiltless of the offense charged. At Mr. Hayashi's request, I telegraphed to Mr. Jernigan to wire me the names of the young men, and also telegraphed to Mr. Denby that the young men were not spies, and asked him if the Chinese Government would not postpone action in the matter until his father, Minister Denby, arrived, stating that he was expected here on September 2. I have the honor to inclose reading of my telegram to Mr. Denby herewith.

I have since ascertained that I was misinformed as to Minister Denby's movements, and that he will not reach Japan at the time named in my telegram.

I also have the honor to inclose copy of a statement prepared by Mr. Yenjiro Yamada, late of the Japanese consulate-general at Shanghai, in regard to the two young men. I have sent a copy of this statement to Mr. Jernigan for his information.

It seems that the young men accused of being spies are students in a commercial school established some years since at Tokyo, with a branch at Shanghai, the object of which was to impart a knowledge of the commerce of China and Japan and to promote the trade relations between the two countries.

I have, etc.,

EDWIN DUN.

[Inclosure 1 with No. 24.—Telegram.]

Mr. Dun to Mr. Denby.

TOKYO, August 27, 1894.

Japanese at the consulate, Shanghai, are not spies. Your father is expected here September 2. Won't Chinese Government postpone action until arrival?

[Inclosure 2 with No. 24.—Statement.]

AUGUST 29, 1894.

The two Japanese, Kusuuchi and Fukuhara, who were arrested under suspicion of being spies, have been living in Shanghai for the past four years for the purpose of studying the Chinese language, and at the same time of investigating into the trade. It appears that last spring they made a visit to Hankow and one of them, i. e., Kusuuchi, also to Soochow, in order to study commercial transactions, but they went to no other part of the interior.

They have been wearing Chinese costumes since about a year and a half ago, but this is a very common habit among young business students in China for the reason that they can thus secure many facilities in learning the language and commercial intercourse with the natives. They do so also because they have very limited means and they can live more economically by adopting Chinese customs. Beside these there are no other special objects in view for wearing Chinese costumes.

YENJIRO YAMADA.

No. 25.

Mr. Jernigan to Mr. Uhl.

[Telegram.]

SHANGHAI, September 3, 1894.

Inform Secretary action in case alleged spies approved by vice-roy. Foreign settlement presented question jurisdiction of native and mixed court. No jurisdiction claimed and never in custody by me.

JERNIGAN.

No. 26.

Mr. Child to Mr. Uhl.

CONSULATE OF THE UNITED STATES,
Hankow, September 3, 1894. (Received October 11.)

SIR: I have the honor to report that for the past month the situation here has been feverish; at one time, if it had not been for the nerve displayed by my marshal and the officers of the steamer *Tai Wo*, a serious riot would have resulted.

A Japanese, who had been engaged here in business, was escorted on board the steamer by the marshal, so that he might proceed to Shanghai, when a mob of about two thousand roughs collected on the bund, having forced their way into the concession, and it was only by a display of rifles that they desisted from forcing their way on board the steamer, the local troops apparently sympathizing with the mob.

Since then the consular and municipal bodies have notified the vice-roy that, as no gunboat is now here, he is looked to to protect the foreign population and that we will assist him in case of a disturbance by his people.

In the meantime the foreign population have organized in self-defense, as a protection to the women and children, and I think that we will be able to hold our own should the concession be raided.

I have, etc.,

JACOB T. CHILD,
United States Consul.

No. 27.

Mr. Denby, chargé, to Mr. Gresham.

LEGATION OF THE UNITED STATES,
Peking, September 4, 1894. (Received October 11.)

SIR: On the 31st ultimo the tsung-li yamen wrote this legation stating that the governor-general of Hukuang had telegraphed them that on the 24th ultimo a Japanese dressed as a Chinese had been seen without the foreign concession at Hankow; that some soldiers approached him for the purpose of arresting him; that he defended himself with a sword and escaped into the concession; that the American consul refused to give him up, stating that he was a peaceable person, and, on the contrary, put him on a steamer and sent him to Shanghai. The yamen then advances the usual argument—there are no other charges made

against the man—that he wore Chinese clothes and hence he was “obviously engaged in an irregular occupation.” The fact is overlooked that a Japanese, dressed as a Japanese or as a foreigner, would be in constant danger of his life at any place in China except Shanghai.

The yamen make no demand as to this particular man, but request me to direct the consuls in future not to protect Japanese found in Chinese costume.

To this I replied, under date of to-day, that the United States consuls at Hankow and at the other ports will be instructed to afford no protection to Japanese acting as spies.

In a dispatch from Mr. Child, dated the 24th ultimo, he states that on that date, as the marshal of his consulate was escorting a Japanese to the steamer *Tai Wo*, about 2,000 Chinese surrounded him, and it was only by a show of force on the part of the municipal authorities that a riot was averted. As the date corresponds with the date of the incident complained of by the yamen, the Japanese referred to in both communications is doubtless the same.

I have written to Mr. Child that he is not authorized to hold Japanese accused of crime against the demand of the Chinese authorities. A copy of this dispatch is inclosed herewith.

The action of the Chinese authorities with reference to alleged Japanese spies is far from just, and meets with the disapproval of the entire body of foreigners in China. Rewards for the capture of or information as to the whereabouts of Japanese spies have been advertised as follows:

For the capture of one Japanese spy, 100 taels.

For information as to the whereabouts of a Japanese spy, 40 taels.

To these offers are appended others of a more barbarous character, as an offer of 50 taels to any Chinese soldier who brings in the head of a Japanese after battle.

With the inducement to false accusation thus held out, no Japanese is safe. Many innocent people are sure to be accused, and accusation means conviction. Once in the hands of the Chinese, they will plead their innocence in vain.

I have, etc.,

CHAS. DENBY, Jr.,
Chargé d'Affaires ad interim.

[Inclosure in No. 27.]

Mr. Denby, chargé to Mr. Child.

SEPTEMBER 4, 1894.

SIR: I have the honor to acknowledge the receipt of your dispatch No. 32, of the 24th ultimo, with reference to the assembling of a mob to prevent the escorting of a Japanese subject to the steamer by Mr. Child, marshal of your consulate.

On the 31st of August the tsung-li-yamen wrote me officially concerning this affair, stating that you had refused to give up a Japanese demanded by the authorities, and on the contrary had aided him to escape.

It is my duty to inform you that I am in receipt of telegraphic instructions from the honorable Secretary of State that the legation and consulate of the United States should not be made asylum for Japanese who violate local laws or commit belligerent acts. Protection,

he states, is to be exercised *unofficially and consistently with impartial neutrality*. In another instruction he says:

"Our legation and consulates in China are not authorized to hold Japanese accused of crime against the demand of Chinese authorities."

I call your attention again to my circular instruction of the 31st July, and request your strict conformity therewith.

I am, etc.,

CHAS. DENBY, Jr., *Chargé, etc.*

No. 28.

Mr. Denby, chargé, to Mr. Gresham.

LEGATION OF THE UNITED STATES,
Peking, September 8, 1894. (Received October 27.)

SIR: I have the honor to inclose herewith a copy of a dispatch, dated the 18th ultimo, from the consul-general to this legation, with reference to the two alleged spies then held by him at Shanghai.

I inclose, also, copies of all the telegrams received by me from Mr. Jernigan on the subject, and of all the telegrams sent by me to him.

I inclose, also, a copy of a subsequent dispatch from Mr. Jernigan, which relates to the same matter.

I respectfully call attention to this correspondence. It will help to explain the action of this legation as to the rendition of the two Japanese, and the reluctance of the consul-general to give them up.

As to the action of the consul-general of France in the matter, I have the honor to state that his refusal to deliver the alleged spies to the Chinese authorities, and his surrender of them to the consul-general of the United States, met with the full approval of the minister of France at Peking. The French minister told me that the French consul-general not only was not required to surrender them to China, but that "he had not the right to do so." In replying to your telegraphic inquiry of the 21st August, I was guided by this assurance.

I have the honor to state, in conclusion, that the opinion of the foreign representatives at Peking was opposed to giving up the accused Japanese without a preliminary examination before a foreign official.

I have, etc.,

CHAS. DENBY, Jr.,
Chargé d'Affaires ad interim.

[Inclosure 1 in No. 28.]

Mr. Jernigan to Mr. Denby.

AUGUST 18, 1894.

SIR: I have the honor to communicate that on Tuesday last the consul-general for France came to this office and informed me that two Japanese subjects, at the instance of the Chinese authorities, had been arrested by the French police, on the French concession, and that he had ordered them to be brought to me. Soon after, and before the French consul-general had left, the police arrived with the two Japanese in custody. I stated to the French consul-general that I was not empowered with any of the functions of the Japanese consul-general, although representing Japanese interests, and consequently could not try a Japanese for any offense he might commit, but that I understood that I could intervene in the interest of humanity and justice where the safety and interests of Japanese were involved.

The two Japanese are charged with being spies, and to have shut the door of the consulate in their faces would possibly have been equivalent to turning them over to the executioner.

There was no complaint before me of charges against these Japanese. The alleged offense against them had in no way been brought to my attention by any officer of China, either verbally or otherwise. So far as concerned China this consulate-general was in ignorance, having no record before it.

The two Japanese then stood before me as asking for an asylum in apprehension of danger to their lives. They asked to be allowed to remain in this consulate-general until they could be made acquainted of any charge against them, and in order that any charge made against them might be heard before the proper tribunal.

The asylum thus asked for was granted, with the understanding that I would adopt the necessary precautions to repel any idea that I was protecting any enemy of China, and such as would enable me to preserve the status quo until the matter was fully understood.

On Thursday last I received a communication from the taotai, requesting that the two Japanese be delivered to his officer, and charging that they were spies. I replied that I would lay the facts before you and obey your instructions.

This he understood and assented to.

Some of the papers found in the possession of the Japanese would naturally, in the state of war now existing, create a suspicion of a character tending to support the alleged charge, but they state that they had been students in Shanghai for several years, wearing Chinese clothes, giving the name of the school, the teacher, the place of their lodging, with other facts that give to their statement a minuteness which more than raises a reasonable doubt in their favor.

One of these young men especially has the appearance of being well raised. His deportment is that of a gentleman, and there is no doubt of his possessing more than ordinary intelligence.

The rule prevailing here is, when a foreigner has no consular representative, he is amenable for trial before the mixed court.

The arrest was made on the foreign concession, and, I understand, the Japanese have resided on the foreign concession, and were so residing in a lodging house on the same when taken in custody. I need not advance an opinion as to the summary proceedings of a native court, and a common feeling of humanity counsels the securing of a tribunal for their trial, the proceedings of which would be promotive of justice according to our idea, and whose judgment would be likewise accepted as righteous.

I may add that all foreigners here strongly approve of the course thus far taken by me, and this course also has the indorsement of the foreign press.

The case is one of great delicacy, and I have endeavored to use such "tact" as to maintain good feelings all around, assuring the taotai that nothing should be done prejudicial to the rights of China, and that I would neither condemn nor defend, but remain impartial to the interests of all concerned.

I am, etc.,

T. R. JERNIGAN,
Consul-General.

P. S.—It appears to me that the tribunal before which Japanese, when charged with offenses are to be tried, should be determined without delay.

[Inclosure 2 in No. 28.]

COPIES OF THIRTEEN TELEGRAMS EXCHANGED BETWEEN THE LEGATION AND THE CONSUL-GENERAL.

Mr. Denby to Mr. Jernigan.

AUGUST 19, 1894.

Report case alleged spies. Await instructions.

DENBY.

Mr. Jernigan to Mr. Denby.

AUGUST 19, 1894.

Have written fully relative to alleged Japanese spies. They are secure.

JERNIGAN.

Mr. Denby to Mr. Jernigan.

AUGUST 20, 1894.

Telegraph report case of spies immediately. Yamen impatient.

DENBY.

Mr. Jernigan to Mr. Denby.

AUGUST 20, 1894.

Alleged Japanese spies arrested on French concession by French police, at instance of China. Delivered at this consulate by French consul-general. Disclaimed the right to exercise Japanese consular functions. Accused asked for asylum till case could be investigated. Granted, with understanding that I retain power to preserve status quo. They and papers secure; advise patience; important principle involved. Reasonable doubt China's rights. No danger of prejudice. Assure yamen of my strict impartiality and my purpose to maintain status quo. Have written fully.

JERNIGAN.

Mr. Jernigan to Mr. Denby.

AUGUST 21, 1894.

Propose alleged spies remain in consular jail till close of war, and all papers given to China. In which court are Japanese to be tried?

JERNIGAN.

Mr. Denby to Mr. Jernigan.

AUGUST 25, 1894.

Dispatch concerning spies not received. Telegraph anything you have to add to previous telegrams.

DENBY.

Mr. Jernigan to Mr. Denby.

AUGUST, 25, 1894.

Dispatch must reach you soon. Conservatism greatly beneficial to China. Am sending Japanese home. Managers of business houses only to remain. Suspects promptly deported.

JERNIGAN.

Mr. Jernigan to Mr. Denby.

AUGUST 25, 1894.

Arrested on concession, peacefully and openly engaged away from seat of war; not a Japanese soldier on Chinese soil at the time. Mere schoolboys. China can well afford to have us keep them secure.

JERNIGAN.

Mr. Jernigan to Mr. Denby.

AUGUST 27, 1894.

Cable Gresham asylum only granted. Suspected have resided here three years as students. Are boys. Papers in their possession such as intelligent students might prepare for personal information. Suggest American consuls act as arbitrators.

JERNIGAN.

Mr. Denby to Mr. Jernigan.

AUGUST 27, 1894.

Cabled Gresham fully. Your report not yet received.

DENBY.

Mr. Jernigan to Mr. Denby.

SEPTEMBER 1, 1894.

Instructions received. Hope position here fully understood.

JERNIGAN.

Mr. Denby to Mr. Jernigan.

SEPTEMBER 1, 1894.

Department instructs me that you had no power to receive, and are not authorized to hold, the alleged spies. Deliver to taotai.

DENBY.

Mr. Jernigan to Mr. Denby.

SEPTEMBER 3, 1894.

Alleged spies delivered to-day, as instructed. Translation mailed not important now. You seem not to understand position here.

JERNIGAN.

[Inclosure 3 in No. 28.]

Mr. Jernigan to Mr. Denby.

SPETEMBER 1, 1894.

SIR: I have the honor to verify the following telegram sent you in cipher on the 1st:

"DENBY, *Peking*:

"Seven Japanese students suspected; effects searched in my presence. Taotai's secretary present. Nothing suspicious found. Gone to Japan. Alleged spies same class of students residing here several years. Their papers only such as intelligent students would have. Believe them innocent. Try to arrange for their deportation.

"JERNIGAN."

For two or three years there have been a number of Japanese youths attending school at Shanghai, and, to avoid the curious it has been their custom to dress in Chinese clothes.

When war was declared this custom was not changed, and this is the ground of suspicion against these young men. Learning that I had advised them to return to Japan to avoid trouble, the taotai sent his secretary to me with the request that their baggage be examined. No charge had been preferred, but, having in view the interest of the young men alleged to be spies, members of the same school, and believing that a failure to find anything suspicious would greatly tend to their acquittal, I took the chances and assented.

The examination could not hurt the young men owning the baggage, for they had gone to Japan, leaving a friend to superintend the shipping of their baggage. This friend was present at the examination with my marshal.

The result of the examination was a complete vindication of the students from all suspicion, and some of their papers were similar to the papers found with the effects of the alleged spies, and were nothing more than notes taken on geographical subjects.

I do not think the two now suspected are spies. Even if a reasonable suspicion attached, it would be cruel to behead mere boys for indiscretions which may have been committed in furtherance of their educational plans.

I am interested in their case, because I feel that to deliver them to a native court may be to deliver them to death, and this would lead to retaliation.

The barbarous proclamation of the governor of Formosa shocks civilization throughout the world, and it yet remains for China to disavow the prize money rescript for heads and ships issued here by a subordinate officer of her arsenal. When the barbarities and cruelties of the dark ages are sought to be utilized in modern warfare, it becomes the humane and patriotic of all climes and races to effectually protest.

I am, etc.,

THOMAS R. JERNIGAN,
Consul-General.

No. 29.

Mr. Gresham to Mr. Denby, chargé.

DEPARTMENT OF STATE,

Washington, September 18, 1894.

SIR: Referring to my instructions of the 29th ultimo,¹ in relation to the exercise by our diplomatic and consular representatives in China of good offices in behalf of Japanese subjects in that country, I inclose herewith for your information a copy of an imperial ordinance promulgated at Tokyo on the 4th of August last, touching the status of Chinese subjects in Japan.

By the treaty between China and Japan, signed at Tientsin September 13, 1871, it is provided in article 13, which relates to the trial and punishment of offenses committed in the jurisdiction of one of the contracting parties by subjects of the other, that "when arrested and brought up for trial, the offender, if at a port, shall be tried by the local authority and the consul together. In the interior he shall be tried and dealt with by the local authority, who will officially communicate the facts of the case to the consul."

The treaties between China and Japan being abrogated by the state of war now existing between the two countries, the consuls of the one country no longer exercise the powers and the qualified jurisdictional intervention with which they were invested by the treaties in the territory of the other in time of peace. The Japanese Government, therefore, in the first article of the Imperial ordinance, declares that Chinese subjects in Japan shall be wholly subject to the jurisdiction of the Japanese courts. The abrogation of the treaties is necessarily attended with the same effect upon the status of Japanese subjects in China as upon that of Chinese subjects in Japan; and this Government, as has heretofore been stated, can not invest Japanese subjects in China, or Chinese subjects in Japan, with an extraterritoriality which they do not possess as the subjects of their own sovereign.

The good offices, however, which this Government has granted are to be exercised on all proper occasions and to the full extent allowed by international law.

I am, etc.,

W. Q. GRESHAM.

[Inclosure in No. 29.—The Japan Daily Mail.—Yokohama, Thursday, August 9, 1894.]

Imperial ordinance.

We publish below an authorized translation of the important imperial ordinance of the 4th instant.

We hereby sanction the present regulations relating to Chinese subjects residing in Japan, and order the same to be promulgated.

(Privy seal.)

(H. I. M.'s Sign Manual.)

The 4th day, the 8th month, the 27th year of *Meiji*.

(Countersigned)

Count ITO HIROBUMI,
*Minister President of State.*Count INOUE KAORU,
*Minister of State for Home Affairs.*MUTSU MUNEMITSU,
*Minister of State for Foreign Affairs.*YOSHIKAWA AKIMASA,
Minister of State for Justice.

Imperial ordinance No. 137.

ART. 1. Chinese subjects are authorized, subject to the provisions of this ordinance, to continue to reside in those places in Japan where they have hitherto been permitted to reside and there to engage in all peaceful and lawful occupations with due protection of life and property, and subject to the jurisdiction of Japanese courts.

ART. 2. Chinese subjects residing in Japan in accordance with the preceding article shall, within twenty days after the promulgation of this ordinance, apply to the governor of the prefecture where they reside to register their residences, occupations, and names.

ART. 3. Certificates of registration will be issued by the governors of prefectures to Chinese subjects who register themselves in pursuance of the preceding article.

ART. 4. Chinese subjects who register themselves according to article 2 shall be entitled to change their places of residence, provided they obtain from the governor of the prefecture where they are registered, visés upon the certificates of registration and apply to the governor of the prefecture of their new residence within three days after arrival to be re-registered as prescribed by article 2.

ART. 5. The governors of prefectures may expel from the territories of Japan, Chinese subjects who fail to register themselves as required by this ordinance.

ART. 6. Chinese subjects who injure the interests of Japan, commit offenses, or disturb order, or are suspected of any of the above acts, shall, in addition to the penalties denounced for such acts, be liable to expulsion by the governors of prefectures from the territories of Japan.

ART. 7. The present ordinance applies to Chinese subjects employed by the Japanese Government or subjects.

ART. 8. The present ordinance does not affect the orders and measures of the imperial military authorities which may be issued against Chinese subjects residing in Japan in connection with warlike matters.

ART. 9. Permissions to Chinese subjects to enter the territories of Japan after the promulgation of this ordinance shall be limited to those specially granted by the minister of home affairs through governors of prefectures.

ART. 10. The present ordinance shall be enforced from the date of promulgation.

No. 30.

Mr. Jernigan to Mr. Uhl.

CONSULATE-GENERAL OF THE UNITED STATES,
Shanghai, September 21, 1894. (Received October 31.)

SIR: On the 3d I had the honor to send you the cablegram which I now verify, as follows:

"Inform Secretary action in case alleged spies approved by viceroy. Foreign settlement presented question jurisdiction of native and mixed court. No jurisdiction claimed and never in custody by me.

"JERNIGAN."

I was persuaded to send this cablegram under the apprehension that the Department might possibly have a mistaken impression of my action in the case of the two alleged Japanese spies.

My dispatch to you the 21st August will show that my duty in connection with the protection of Japanese interests in China was correctly understood, and as therein stated I was not invested with nor was I to pretend to exercise any of the functions of the late consul-general of Japan; that my duty was administrative only and in no sense judicial; that I was not to forget that I represented my own Government and no other government, and was not to go outside of my own consular functions nor extend these functions to the protection of any but citizens of the United States.

Deprived of the counsel of the legation at Peking by the delay of the telegraph and the mail, I acted on the line of duty indicated and was subsequently confirmed in the accuracy of conception by instructions from the legation.

The dispatch of the 21st August is referred to and its substance restated to adduce in this dispatch the evidence that the new duty devolving upon me by the Department undertaking to protect Japanese interest in China was not misapprehended.

In the case of the two alleged spies, not an official act of mine was exercised in their behalf.

When brought to this consulate-general by the French consul-general, I accented the statement to him that I could do nothing for them officially, that I would not recognize them officially, nor would I permit them to find an asylum in my consulate.

At that time the management of the Japanese bank here, Mr. Nishunmaki, called on other business, and his attention was directed to the case of the two young Japanese, with the information that I could do nothing for them in my official capacity.

The charge against them was serious, but it had not been brought to my attention as a matter of record, and, in the then excited state of the Chinese mind, to have declined all suggestions would in the accepted opinion have meant death to the young men within twenty-four hours. Of this no foreigner here entertains a doubt, not so much on account of the nature of the charge as because of the "Kwoshing" disaster and other unfavorable news from the Chinese army in Korea.

You will not fail to appreciate the delicacy of my position and the pressure of circumstances.

Viewed from a legal standpoint the case presented no difficulty, but I had been instructed to protect Japanese interest, and here was a case that [appealed] not to law but to humanity. I was not asked to intervene legally, officially, but as a man having the confidence of both China and Japan and desirous of being just to both and at least humane to the imperiled subjects of the one whose interest I had been published as being the representative of at this port.

When the two Japanese, intelligent and manly in bearing, frankly stated that they had no wish to evade the charge, and would voluntarily and at their own expense remain in the consulate until the charge was formulated, and the tribunal determined upon, and before which they would answer, there was no part of my nature capable of denying, in the face of circumstances, to me the reasonable and humane request. And in not refusing the request I felt that I was not departing from the spirit of the principle announced by Kent, in his commentaries, that even a fugitive should not be surrendered until the civil magistrate shall have ascertained the existence of reasonable grounds for the charge and sufficient proof to put the accused upon his trial.

This occurred in the middle of the afternoon. During the evening a Chinese judge, of pleasant personal relations, called at my room, and,

when the circumstances were explained to him, with the assurance that it was not intended in a legal sense to give an asylum to the two Japanese, and that they were willing to stand trial as soon as a tribunal could be determined, he, understanding the nature of the courts here, expressed himself as being perfectly satisfied.

Two days after this the secretary of the viceroy of Nankin called to see me, and when the explanation was repeated he answered that the viceroy had not correctly understood my action and the reason, and that he would state the facts as they were to the viceroy. The result of this was a special telegram from the viceroy to the Shanghai taotai instructing the latter to convey to me his thanks for my considerate action; and this telegram is embraced in a communication from the taotai to me, now a part of the records of the consulate.

You should know these facts to know that I have not been inconsiderate in this matter and that I am able to give such a reason for my action as when understood to meet the approval of the highest Chinese official of this consular district and high officials of the Japanese Government as well.

It is seldom that a mutual friend meets with such success in filling an office always embarrassing. My own Government, taking a legal view of the subject, in withholding its approval in reality approves, for I never intended to act in an official capacity and disclaimed it at the outset.

Why there should have been any doubt as to the proper tribunal for the hearing and trial of the two Japanese is this: They were living in the foreign settlement, and the native courts are not invested with exclusive jurisdiction of such residents. Even a Chinese in the employment of a resident of the settlement, regardless of the offense of which he may be charged, can not be brought before the native court for trial. He can only be arrested on a warrant indorsed by the senior consul and the consul of the foreigner with whom he resides. Then his case must be first heard before the mixed court, in which a foreign official presides with the Chinese judge. If the offense charged is capital, then the mixed court is the court for the preliminary examination to ascertain "the existence of reasonable grounds for the charge and if there is evidence sufficient to put the accused upon his trial." Should this be decided in the affirmative the accused is sent to the native court; but this is only in capital cases.

The two Japanese were charged with a capital offense. The Department, through the legation, instructed me to deliver them to the taotai, the native court. This gave rise to some adverse comment here, as it was thought that the instructions would be to deliver to the judge of the mixed court; but such comment was natural and was due to this fact: A foreigner on the concession, without a consular representative, charged with an offense is always arraigned before the mixed court, and it was argued that the case of the two Japanese was similar, when, in fact, it is quite dissimilar, for Japan is at war with China, and to add to the dissimilarity the Japanese Government, by proclamation of the Emperor, asserts exclusive jurisdiction over all Chinese residing in Japan.

But notwithstanding the force in the position taken by the Department to deliver direct to the native court, the precedent would not be without danger to Americans in China in the event of a war between China and the United States. In that event China, by virtue of this precedent, would claim exclusive jurisdiction of American citizens.

During the Franco-Chinese war the interest of Frenchmen in China

was placed under the protection of Russia, and the Russian consul-general here exercised in full the functions of a consul-general of France. And this was, also, a fact that in part gave rise to the adverse comment, no one seeming to remember that such functions were exercised by the Russian consul-general by virtue of an agreement between China and Russia.

In this connection I submit that as the United States had undertaken the protection of Chinese interest in Japan and Japanese interest in China, the inference was not opposed to reason that possibly some understanding between these three Governments might be in contemplation looking to some special tribunal to adjust differences between the subjects of China and Japan, and I felt that no rights of China could be jeopardized by moving slowly in the case of the two Japanese. I knew that China had made a proposition of the character indicated to the legation, and it was very generally hoped by foreigners here that some such arrangement would be entered into. The proclamation of the Emperor of Japan, asserting the exclusive jurisdiction of the courts of Japan over Chinese in Japan, had not then been published.

It was this proclamation that put an end to all hope, and soon China asserted the same exclusive claim over Japanese residing within her borders.

When this proclamation of the Emperor of Japan was made known, and subsequently the claim of a similar prerogative by the Government of China, as many as 500 Japanese left this port for Japan during one week.

At the declaration of war between China and Japan there were about 1,500 Japanese residing at Shanghai, and this number was augmented by the coming here of Japanese from other Chinese ports. But now there are not more than 100 at Shanghai, and nearly all Japanese engaged in business here have returned home.

The Department should know that when it became fully known that Japanese in China were under the exclusive jurisdiction of Chinese courts a system of espionage was inaugurated and operated by the authorities of China against Japanese residents inconsistent with the consent given by China that they could reside on her soil. Such consent made it obligatory on the part of China to protect Japanese residents in their peaceful vocations. But no Japanese could remain in China under the suspicion of being a spy and the annoyance and suspense of being faced with the probability of undergoing continual preliminary examinations.

But the suspicion of the Chinese authorities was not confined to Japanese residents.

When Consul Child, at Hankow, advised Japanese residing at that port to return home, and his marshal was openly accompanying one to the steamer, the taotai of Hankow informed the tsung-li yamen that Mr. Child acted as an accessory to the escape of a spy. No charge had been preferred against the Japanese thus going home and none had even come to Mr. Child's knowledge. The taotai of Hankow, as the taotai here, requested American consuls to advise Japanese to return home; and in doing what was thought best by all, an American consul is reported as guilty of a dishonorable act by the very Chinese official whose advice he was acting upon.

And because of my action in the case of the two Japanese, the rectitude of my conduct was called into question also by the Chinese officials who had attested its rectitude under their own hand and seal.

In behalf of American consuls in China, we do not doubt your purpose to protect us from unjust imputation in the discharge of a duty ever admitted as most delicate, embarrassing, and most difficult in performing.

I know that American consuls in China have endeavored to efficiently represent their Government and bear themselves as comported with the honored ensign under which they moved on their daily lines of duty, and I know that their intentions have been honorable and ought not to be impugned with impunity.

Mistakes may have been made and doubtless will be made, but the suspicious nature of the Chinese mind may well be properly rebuked when attempting to offer its attributes as the standard by which to judge an officer of the United States.

For myself, I have acted as I firmly believed was proper and considerate under all the circumstances, and am confident of my impartiality.

I am, etc.,

T. R. JERNIGAN,
Consul-General.

No. 31.

Mr. Gresham to Mr. Dun.

DEPARTMENT OF STATE,
Washington, September 22, 1894.

SIR: Your dispatch of the 1st instant,¹ relative to your efforts to secure the release of two Japanese boys, under arrest at Shanghai, charged as spies, has just been received.

In exercising your good offices in Japan in behalf of Chinese subjects there you act unofficially and not officially. In this new relation you and our consuls in Japan do not sustain to China and Chinese subjects the relation which the Chinese minister and consuls in Japan sustained to them. This will appear clear enough, I think, from my instructions of August 29² and September 1,³ respectively, and the inclosed copy of an instruction, of the 18th instant,⁴ to our chargé d'affaires at Peking.

The Chinese minister here agreed that the two alleged Japanese spies should not be tried until Colonel Denby returned to China.

I am, etc.,

W. Q. GRESHAM.

No. 32.

Mr. Jernigan to Mr. Uhl.

[Telegram.]

SHANGHAI, *October 9, 1894.*

Two Japanese alive; treated well.

¹ No. 24.

² No. 19.

³ No. 22.

⁴ No. 29.

No. 33.

Mr. Jernigan to Mr. Uhl.

[Extract.]

UNITED STATES CONSULATE-GENERAL,
Shanghai, October 9, 1894. (Received November 13.)

SIR: * * * The two alleged Japanese spies are alive and have all they need to eat and drink. Many of the reports in the home papers about them are so false as to be past finding out.

I am, etc.,

T. R. JERNIGAN.

No. 34.

*Mr. Gresham to Mr. Denby, chargé.*DEPARTMENT OF STATE,
Washington, October 20, 1894.

SIR: I should have informed you earlier that before the instruction was sent to you, directing that the two alleged Japanese spies at Shanghai be turned over to the Chinese authorities, the Chinese minister at this capital gave me his positive assurance that they should be detained by his Government and not punished or otherwise dealt with until the arrival of Minister Denby at Peking. The minister has twice called at the Department and assured me that the reports in the American papers to the effect that the two alleged spies had been beheaded by the Chinese Government were untrue.

I am, sir, etc.,

W. Q. GRESHAM.

No. 35

*Mr. Denby, chargé, to Mr. Gresham.*LEGATION OF THE UNITED STATES,
Peking, October 22, 1894. (Received December 3.)

SIR: I regret to have to report that the two Japanese who were arrested in the French concession at Shanghai, during the month of August, and subsequently delivered by the consul-general of the United States to the Chinese authorities, were decapitated at Nankin, on the 8th instant. It is not known what proof of guilt was brought against them, nor what was the result of the repeated examinations to which they were subjected. The yamen declined to accede to my informal request for information on the subject.

I have, etc.,

CHARLES DENBY, Jr.,
Chargé d'Affaires ad interim.

No. 36.

*Mr. Jernigan to Mr. Uhl.*UNITED STATES CONSULATE-GENERAL,
Shanghai, October 22, 1894. (Received November 20.)

SIR: I have the honor to verify the cablegram sent you on the 9th instant, as follows:

"Two Japanese alive. Treated well."

The American papers received immediately preceding the sending of the cablegram contained reports so much at variance with the facts connected with the two Japanese, I was induced to make what I believed at that time an essential correction. Without any solicitation on my part, the secretary of the taotai had voluntarily informed me that the two Japanese were well treated. Since, however, they have been decapitated, and if tortured, as reported, it is in conformity to Chinese law, for, according to Chinese law, no subject of China can be executed without first confessing guilt, and if he will not confess, he is tortured until he does. Possibly this cardinal principle of Chinese criminal law was applied in the case of the two unfortunate Japanese.

In reading the copy of my last dispatch to you, on the subject of the two Japanese, I observe that I could have made clearer some of the reasons that necessitated the action taken by me.

There were between thirty and fifty Japanese students in Shanghai for the purpose of learning the Chinese language. These young men were sent here, and had been here for several years, by their parents, with the view of qualifying themselves as intelligent agencies in the commerce between China and Japan. When war was declared these students were marked for arrest. The first overt act for their arrest was the proceedings begun by the Chinese authorities for the arrest of the two now dead. Had it been known to the Chinese authorities that the limit of my power as the protector of Japanese interest only extended to an inquiry after arrest, all the students would have been summarily arrested, and, it is believed here, as summarily dealt with as were their two fellow students. This belief appears to be well founded, for soon after the handing over of the two Japanese the Chinese authorities applied to the senior consul here for a warrant for the arrest of the manager of the branch bank, located here, of the Yokohama specie bank, and the arrest of several other Japanese long engaged in business at Shanghai was contemplated immediately.

There were no known reasons whatever for such wholesale proceedings. The manager and his business associates were highly respected, and had won the confidence of the business men of Shanghai by their unflinching integrity.

From such facts I do not hesitate to conclude that the delay, caused by the course of this consulate-general in the case of the two Japanese, prevented the arrest of as many as 200 Japanese upon mere suspicion, and probably saved many from being executed and others heavily ransomed.

There was another reason. One of the reasons, and the main one, stated by the Chinese authorities for the arrest of the two Japanese, was that they were dressed in Chinese clothes. It would not have done to have permitted the arrest made for that reason. Apart from the fact that the Japanese students here had been in the habit, before the declaration of war, of wearing Chinese clothes, it is a fact that many of the American missionaries in the interior of China wear Chi-

nese clothes, and to have assented to such a reason as a well-grounded suspicion would have endangered many of my own countrymen. You will see how easy it would be to apply the principle to a foreigner, and call him a spy, because he dressed in Chinese clothes. The danger of such a precedent is seen in the unsafe and threatening attitude to American missionaries in the interior of China, and even at Peking, who wear their native dress, as they should do anyhow.

I have never understood that the instructions to protect Japanese interest gave me the authority to exercise consular functions, but I submit that there may be embarrassment and danger in assuming the protection of Japanese and allowing the Chinese authorities to arrest them whenever suspected, and making the inquiry as to the cause to the court of a semicivilized nation, after the arrest is made.

I do not mean to be misunderstood as writing argumentatively, but merely stating what occurs to me, believing that you will appreciate what I write in a spirit of frankness.

As an evidence of the force of the danger indicated, as apprehended, these facts appear pertinent: Before the declaration of war, but in anticipation of it, many of the Japanese residents of Shanghai were preparing to return to Japan, but when, with the declaration of war, came the declaration that the United States had assumed the protection of Japanese interest in China, these Japanese abandoned the idea of returning to Japan and resumed their usual business vocations. For a few weeks all went smoothly, but as soon as it became known that no reason for the arrest of a Japanese need be stated to me by the Chinese authorities, and to give or not to give a reason was optional with said authorities, nearly every Japanese left for Japan. I am not stating it too strong when I write that there was almost a stampede among the Japanese residents at Shanghai; they regarded the protection as wholly ineffectual.

With special reference to the two Japanese who were arrested and executed, I wish to repeat that the action taken by me was, when understood, promptly approved by the Chinese authorities.

In the sense intended, and as understood here, there was no asylum granted, and certainly no judicial power whatever exercised by me. It was an agreement, all around, that matters should remain *status quo* until I reported the case to the minister and received instructions, which was promptly done by me. There was no possible way for the two Japanese out of the trouble, except by delay and a more calm consideration of their case and the surroundings.

The instructions received from the legation in regard to their delivery read as follows:

"Department instructs me that you had no power to receive and are not authorized to hold alleged spies. Deliver to taotai."

The last line, "deliver to taotai," left me no discretion. Had that line been omitted, I could have said to the Chinese authorities, "My Government instructs me that I have nothing to do with the case," and the same I could have repeated to the two Japanese. The latter could not have escaped, for they were shadowed by the police. The only change effected would have been a preliminary examination before the mixed court and their delivery to the taotai. Their fate would have been the same, as the mixed court, in which a Chinese judge presides with a foreigner, can not determine a capital case.

But, as instructed, I made the delivery direct to the taotai, and as far as I had the discretion, outside of the concession, in consideration of the local laws, customs, and prejudice of Shanghai.

There is no port in the world like this, in the similarity of the customs and regulations, but foreigners at Shanghai understand and appreciate all done by me, and reports to the contrary are silly for their utter falsity.

I respectfully urge upon your attention the great importance of not assenting even indirectly to the establishment of any precedent, however remote, by virtue of which the semblance of a right can be inferred as giving China the power to proceed direct against American citizens residing in China, in the event of war between China and the United States.

I am, etc.,

T. R. JERNIGAN.

No. 37.

Mr. Gresham to Mr. Denby, chargé.

DEPARTMENT OF STATE,
Washington, October 23, 1894.

SIR: I have received your dispatches of August 8, 14, 27, and of the 4th ultimo,¹ all relating to the presence of alleged Japanese spies in China and the proposed treatment of them by the Chinese Government.

While your request to the tsung-li yamen that Japanese suspects should not be subjected to harsh treatment is approved, the Department is unable to concur in your recommendation that Japanese convicted of having acted as spies in China should simply be deported. It would seem to be expecting too much that China should so limit the punishment for an offence of this character.

I am, etc.,

W. Q. GRESHAM.

No. 38.

Mr. Dun to Mr. Gresham.

LEGATION OF THE UNITED STATES,
Tokyo, Japan, October 23, 1894. (Received November 13.)

SIR: I have the honor to acknowledge the receipt of your instruction of the 22d ultimo,² relative to the two Japanese boys under arrest at Shanghai, charged as spies.

In connection with the last paragraph of your instruction, in which you inform me that the Chinese minister at Washington "agreed that the two alleged Japanese spies should not be tried until Colonel Denby returned to China," I regret to say that the young men in question were executed at Nankin on the 8th instant, before the colonel had reached Shanghai.

I have, etc.,

EDWIN DUN.

¹Nos. 7, 8, 15 and 27.

²No. 31.

No. 39.

*Mr. Gresham to Mr. Denby, chargé.*DEPARTMENT OF STATE,
Washington, October 30, 1894.

SIR: I have to acknowledge the receipt of dispatch of the 1st of September,¹ from our chargé at Peking, in relation to the delivery of the two alleged Japanese spies at Shanghai into the custody of the Chinese authorities.

As it is probable that you have already received the formal instructions of the Department in regard to the exercise of good offices in behalf of Japanese subjects in China, pending the war between that country and Japan, it is not necessary, in replying to the present dispatch, to amplify the views previously expressed on that subject.

In dealing with the case of the alleged spies at Shanghai, it has not been the purpose of the Department to prejudice any question that might arise in any other war than that now existing between China and Japan. The stipulations in the treaties between those countries on the subject of jurisdiction are reciprocal. As you will learn by the instructions of the Department heretofore sent to your legation, the Japanese Government, on the 4th of August, two days after the publication in the official gazette of its declaration of war against China, issued an imperial ordinance in which it was declared as one of the first results of the state of war that Chinese subjects in Japan should be wholly subject to the jurisdiction of the Japanese courts.

After the alleged spies at Shanghai were delivered over to the Chinese authorities, a report was published in the newspapers to the effect that they had been immediately beheaded. Referring to this report, the secretary of legation and chargé d'affaires ad interim of Japan in this city, made, on the 5th of September, a statement which was published by the press on the following day, in which it was declared that the delivery of the two suspected Japanese into the hands of the Chinese authorities was entirely in conformity with the Japanese interpretation of the authority and power of neutral consuls. A copy of this statement is herewith inclosed. On the 10th of September a further statement from the same quarter, on the same subject, was published; a copy of this statement is also inclosed.

While holding that under the particular circumstances the alleged spies were not subject to the jurisdiction of the consul general of the United States, and could not be given asylum by him, I took proper measures to prevent any summary action by the Chinese authorities, and, as the Department is at present advised, no such action was taken. When I informed the Chinese minister of the views of the Department touching the authority of the consul general, I requested that the prisoners should not be tried until the return of the minister of the United States to his post. This specific time was suggested, as it afforded ample opportunity for investigation and deliberation. The Chinese minister agreed to my suggestion, and at once telegraphed to his Government in regard to our understanding.

I have no reason to suppose that this understanding has not been kept. On the 9th of October, more than a month after the first report of the execution of the alleged spies, the consul-general at Shanghai telegraphed to the Department that they were alive and had been well treated. I had already been assured by the Chinese minister of this

¹No. 23.

fact, and he has also given me an assurance within the last few days of the groundlessness of the more recent report of their execution. The Department observes the statement made by our chargé that it never was his intention ultimately to refuse to give up the alleged spies, and appreciates the solicitude he felt to secure every possible guarantee of just and humane treatment for them; and it is gratifying to believe that the Chinese authorities have exhibited due appreciation of the circumstances.

This Government would be glad to see an arrangement made between China and other interested powers which should define the jurisdictional rights of the foreign settlement at Shanghai, with respect to crimes charged to have been committed therein in time of war, as well as in time of peace. Whether China would be willing to yield her jurisdiction in respect to subjects of a belligerent charged with offenses against the laws of war, may be doubtful. It is not supposed that any of the French subjects to whom the dispatch of our legation refers as having been brought before the Russian consul at Shanghai for hearing, during the Tonquin war, were charged with offenses of that character. However this may be, the consuls of the United States in China, as has been pointed out in prior instructions of the Department, have never been invested with power to exercise jurisdiction over the citizens or subjects of another nation.

The Department had repeatedly so held, even in respect to citizens of Switzerland who have for many years been under the protection of our ministers and consuls. It may also be noticed that Hall, in his recent work on Extraterritoriality in the East, adverts to the fact that, while what is known as the doctrine of assimilation has prevailed in Turkey and certain other countries, the British orders in council touching consular jurisdiction in China do not purport to authorize the exercise of such jurisdiction by British consuls except in the case of British subjects.

I am, etc.,

W. Q. GRESHAM.

[Inclosure 1 in No. 39.]

Statement of Japanese legation, September 5, 1894.

WASHINGTON, *September 5.*

Mr. Tsunejiro Miyaoka, Japanese secretary of legation, said this morning in relation to the reported action of United States Consul-General Jernigan at Shanghai, in delivering the two suspected Japanese into the hands of the Chinese authorities, that it was entirely in conformity with the Japanese interpretation of the authority and power of neutral consuls in a belligerent country, and that should Japan suspect any Chinese subject, resident in Japan, of being openly hostile to the Japanese Government, or believe that justice warranted their arrest, Japan would not recognize the jurisdiction of any neutral consul over the suspect.

The neutral consuls, while expected to exert their friendly offices to prevent as far as possible any injustice or undue severity being done the natives of one country while in the land of the other, had no actual jurisdiction whatever. Neither our consul's action nor the summary punishment meted out to the unfortunate Japanese by Chinese authorities, it was said, occasioned any surprise at the Japanese legation.

[Inclosure 2 in No. 39.]

Statement of Japanese secretary of legation and chargé d'affaires ad interim, New York Herald, September 10, 1894.

Speaking of the status of the Japanese and Chinese in their respective countries he said:

"One of the results of war between the Chinese and the Japanese was the abrogation of all treaties between the two Governments. One of these was in relation to the jurisdiction held by consular courts over the subjects of the two Governments in their respective jurisdictions.

"CONSULAR COURT JURISDICTION ABROGATED.

"Knowing what would be the result of a formal declaration of war, the Japanese Government before making it informed its consular officers in China of its intended action. The formal declaration of war which it made in the imperial rescript of August 1, was published in the official gazette of the Japanese Government on August 2. On August 4 an imperial ordinance was issued relating to the status of Chinese subjects residing within the territory of Japan. The ordinance prescribes regulations for the protection of the Chinese in my country, and consists of ten articles. The first article provides that Chinese subjects shall enjoy the protection of their persons and property, and shall continue to reside in those localities to which, under treaty stipulations, they have been permitted to come. The article also sets forth that they shall be permitted to continue their avocations which they were pursuing before the declaration of war, but shall be subject to the jurisdiction of the Japanese courts.

"From this article you can see that Japan claims, in spite of the treaty stipulations, the right to exercise jurisdiction over all Chinese residing in her territory, and allows them to remain only under condition that they shall be amenable to our courts, giving them in return the entire protection of the law and administrative authority.

"So far as the United States is concerned, this much of its attitude toward the two countries is clear. The protection which the United States consular and diplomatic officers shall extend to Chinese in Japan and Japanese in China can not include consular jurisdiction."

No. 40.

Mr. Denby, minister, to Mr. Gresham.

[Extract.]

LEGATION OF THE UNITED STATES,
Peking, October 30, 1894. (Received December 10.)

SIR: When I arrived at Yokohama I intended to leave on the first ship that was bound for Shanghai. I was induced to delay my departure three days in order to see Viscount Mutsu, secretary for foreign affairs, who proposed to come up from Hiroshima to see me. My interview with the secretary was not important.

It soon appeared that he emphatically repudiated the idea that American consuls could exercise jurisdiction over Chinese in Japan. The whole question, therefore, both in China and Japan, remains exactly as ordered by you.

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I have, etc.,

CHARLES DENBY.

No. 41.

*Mr. Adee to Mr. Dun.*DEPARTMENT OF STATE,
Washington, November 1, 1894.

SIR: I inclose herewith for your information and the files of the legation copy of a dispatch of the 30th ultimo,¹ sent to Mr. Denby, United States minister at Peking, in regard to the arrest of two Japanese spies at Shanghai and their delivery into the custody of the Chinese authorities.

I am, etc.,

ALVEY A. ADEE,
Acting Secretary.

No. 42.

*Mr. Jernigan to Mr. Uhl.*UNITED STATES CONSULATE GENERAL,
Shanghai, November 2, 1894. (Received December 3.)

SIR: I have had the honor to receive your instructions of September, the 15th, in regard to the delegation of consular functions to Chinese subjects, with instructions that the Department respected the objection by the Chinese Government to such delegation, and that the consuls under my jurisdiction be so notified.

I have obeyed the instructions. No instance, however, of such delegation has been brought to my attention, or I would have promptly disapproved it.

I beg to state, in this connection, that the two alleged Japanese spies were not executed as soon as handed over, but that their cases were under investigation for nearly six weeks, and I am now assured that there was no unfairness practiced against them during the investigation.

I regret very much the incident, but the pressure of circumstances made it unavoidable, and the delay saved about thirty young Japanese from arrest and probable decapitation. They were of the school of their unfortunate comrades, whose imprudent and thoughtless acts brought them, I fear, under the just suspicion of the Chinese authorities.

I am, etc.,

T. R. JERNIGAN.

No. 43.

*Mr. Denby, Minister, to Mr. Gresham.*LEGATION OF THE UNITED STATES,
Peking, November 5, 1894. (Received December 20.)

SIR: I have the honor to acknowledge the receipt of yours of September 18,² touching the status of Japanese subjects in China.

The correctness of the position taken by you was patent to me after my interview with the secretary for foreign affairs at Tokyo. This

¹ See No. 39.² No. 29.

opinion has been confirmed by the perusal of the Japanese ordinance of August 4 last, and particularly by articles 6 and 8 thereof.

I have, etc.,

CHARLES DENBY.

No. 44.

Mr. Denby, Minister, to Mr. Gresham.

LEGATION OF THE UNITED STATES,
Peking, November 6, 1894. (Received December 20.)

SIR: I have the honor to inclose an editorial from the Shanghai Mercury of the 30th October, wherein an article in the New York Herald written by the Hon. John Russell Young concerning the case of the two Japanese spies who were arrested at Shanghai is reviewed.

I have, etc.,

CHARLES DENBY.

[Inclosure in No. 44.—The Shanghai Mercury, Tuesday, October 30, 1894.]

Matthew Arnold has observed that there is a world of ideas and a world of practice, and this observation may be applied very fairly to the position taken up by Mr. John Russell Young, a late American minister to China, in respect to a question which he graciously decided in the New York Herald. Mr. Young, with that earnestness felt by one who believes his attitude to be right, attempted to lay down the consular legal and judicial powers on a certain point, but it has, unfortunately for the reputation of Mr. Young, transpired that his views were incorrect and inapplicable. Mr. Young is further at a disadvantage, because he adopted the position of a critic, and it is said that the critical faculty is greater than the creative. "Anyhow," to indulge in an expressive Americanism, logically and legally his arguments were wrong. In that Mr. Young is unfortunate. He is unfortunate because he rushed into print with an impetuosity unbecoming ministerial dignity, to deliver his ipse dixit in case of the two Japanese spies. He represented strong opinion, which might almost be said to amount at first to public opinion. To represent public opinion is to be in a gratifying and a benignant position, but its eventual results are not usually dignifying.

Such is the unhappy position in which Mr. Young is plunged by his own recklessness, without even a ministerial wile to fall back upon. When this gentleman so valiantly espoused the cause of the two Japanese, who, unfortunately for themselves, and their country's honor, took up their abode in China to observe and report Chinese doings, and were caught red-handed, he, for the time being, received public approbation—for the reason that it appeared a hardship that these Japanese, who the consul-general had been instructed to protect, should be handed over to the Chinese authorities by subsequent instructions that he had no authority to protect. Had we been American citizens, we should have shared their sympathy and suspense, of the seeming contradiction of the action of their Secretary of State; but we refrained from doing so, because it was apparent, from that amount of superficial knowledge of American consular law, that we pride ourselves on possessing, that

the consul-general's action could not possibly be a judicial one, and we were struck by the profound ignorance displayed by the ex-minister on that very point. We were struck because it was claimed for him that his residence in China and his literary reputation would give him a right to be heard.

Similarly, Mr. Gladstone's reputation on many matters gives him a right to be heard on various subjects, but when he delves in theology or Irish Government he verges on the amusing. Although the personalities are not exactly parallel, and Mr. Young may not be so weak in theology, yet he is certainly weak in this matter of consular jurisdiction. It was quite within the knowledge of Mr. Young that protection could only be exercised by American representatives in Japan and China in a friendly office and unofficially. We repeat, it surely was within his knowledge, because it was within our knowledge. As the under-Secretary of State is reported to have said in a paper¹ before us "the Government of the United States could not undertake to bring subjects of either power within the jurisdiction of its ministers or consuls, nor would it be justified in allowing its legations to be made an asylum of by those claimed to be offenders against the law of the local government." In fact, the instructions to American ministers, according to this same paper, really were that "the protection rendered must necessarily be confined to the personal and good offices of such functionaries." But the ex-minister would go beyond these instructions. He has asserted that the United States consul-general, having judicial powers, could have weighed the evidence and determined the judgment; but this critic again stumbled by overlooking the Revised Statutes, where it is stated that such powers can only be exercised under the provisions of treaties with those countries, and only over citizens of the United States.

• But the real point turns on this: Had the consul-general here power to deal judicially with the two spies? It is at once apparent that he had not that power, however much desired it was, and credit must be given to him for a little humanity by saying that it was desired. The men were not American citizens; they were Japanese, and followed an occupation the most degrading in the eyes of a civilization which Japan is said to emulate. They were handed over to the consul to be dealt with officially. Had they been brought otherwise to his notice, Mr. Jernigan might have saved the humiliation of the American flag by dealing with them differently. But he was not allowed even to follow any desire which he might have felt toward the course recommended; he acted under orders from a higher authority than that of the ex-minister to China. He received orders from home which even Mr. Young from his pedestal would have had to descend. The feeling here now is that he did what was just, and his action has been fully upheld by the Japanese minister to Washington, who said that in a parallel case Japan would not recognize the jurisdiction of any neutral.

Whatever may be said of the action of the Secretary of State which does not appear inconsistent with his understanding with the Japanese Government, it is believed here that the action of the consul-general secured the delay which the subsequent action of the Chinese authorities made clear and was essential to the safety of many of the Japanese residing in Shanghai at the time. It is known now that the arrest of as many as fifty was in contemplation, and the halt called by the consul-general enabled the innocent to provide for safety, and probably

others to escape the executioner. Thus Mr. Young has been found to have erred not only in his conclusions but in his conceptions of the powers governing the case. Recognizing, as he must now do, that the action of the consul here was right and his instructions not incorrect, Mr. Young's patriotism might also realize the "hope which springs eternal in the human breast" by recognizing that the "humiliation of the American flag" has not descended to those depths to which he first thought it had been plunged.

No. 45.

Mr. Jernigan to Mr. Uhl.

[Telegram.]

SHANGHAI, November 24, 1894.

Fall Port Arthur undoubted. Two Japanese, four weeks' trial. Informed not tortured.

No. 46.

Mr. Jernigan to Mr. Uhl.

UNITED STATES CONSULATE-GENERAL,
Shanghai, November 26, 1894. (Received December 28.)

SIR: On the afternoon of the 24th instant I had the honor to send you the cablegram which I now verify, as follows:

"Fall Port Arthur undoubted. Two Japanese, four weeks' trial. Informed not tortured."

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The remainder of the cablegram was suggested by the variegated reports in the home papers about the subject.

Although the Chinese authorities have to date refused my request for information of proceedings against the two alleged Japanese spies, I believe that the trial was fully of the duration indicated, and was in conformity to the rules obtaining in Chinese courts. A letter from an intelligent foreigner residing at Nankin, where the two Japanese were executed, discredits the reports of their torture. Other letters from the same gentleman have proved so accurate that I am disposed to accept the reported torture as without substantial proof.

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I am, sir, etc.,

T. R. JERNIGAN,
Consul-General.

No. 47.

Mr. Gresham to Mr. Yang Yü.

DEPARTMENT OF STATE,
Washington, November 30, 1894.

SIR: On the 18th of August last you complained to me that the United States consul at Shanghai was protecting two Japanese spies, who had been arrested in the French concession in that city, and whose

surrender was demanded by the Chinese authorities in order that they might be dealt with in due course. After proper inquiry into the circumstances of the case, the demand of the Chinese authorities was recognized as lawful and the men were given up.

Of this decision the Japanese Government has made no complaint. On the contrary, that Government, as is well known, after its declaration of war, proclaimed that the treaties with China were no longer in force, and that the Chinese in Japan would thereafter be wholly subject to the local tribunals; and I am assured by the Japanese minister at this capital that, in the opinion of his Government, our consul at Shanghai could not, under the circumstances, have held the men against the demand of the authorities.

Nevertheless, when I informed you of the Department's decision, I requested that the men might not be tried till the return of the minister of the United States to Peking.

While it was not assumed that this Government had a right to exact a condition of this kind, the request was made with a view to prevent any precipitate or aggravated action, and you were so good as to comply with it at once. You subsequently informed me that your Government had acceded to it.

On the 13th day of November I received a dispatch from Mr. Dun, our minister at Tokyo, saying that the men had been beheaded. This information you subsequently confirmed in an interview at this Department, held at my request. You then stated not only that the men when arrested had in their possession maps describing military works in China—a fact which had previously been communicated to the Department—but also that it was found that they had sent military information to their Government by telegraph, and that the evidence that they were spies was so clear and strong that the death penalty was inflicted.

Without assuming to question the lawfulness of this sentence under the laws of war, as recognized in the United States as well as in other countries, I regret to say that there is reason to believe that the men were executed before the return of Colonel Denby to Peking, and, therefore, in derogation of the voluntary promise which you assured me your Government had made. If this belief should prove to be well-founded, it is needless to point out to you the unfavorable effect which the action of the Chinese authorities can not fail to produce on public opinion, not only in this country but elsewhere.

Accept, sir, etc.,

W. Q. GRESHAM.

No. 48.

Mr. Yang Yü to Mr. Gresham.

CHINESE LEGATION,
Washington, December 6, 1894.

SIR: I have the honor to acknowledge the receipt of your note of the 30th ultimo, in which you refer to the interviews had between us respecting two Japanese spies arrested in Shanghai a few months ago, and you particularly direct my attention to the fact that you requested me to ask that the two Japanese should not be tried till the return of United States Minister Denby to Peking, and that you understood me subsequently to have informed you that my Government had acceded to your request.

Your conduct, Mr. Secretary, in this whole transaction has been so just and impartial that I would deeply deplore any embarrassment which might even in an indirect way attach to you on account of it, and certainly nothing that I shall do or say shall in the slightest degree reflect upon you.

When I received from you the request above alluded to, I communicated it at once by cable to my Government at Peking, and expressed strongly my wish that action in the case of the Japanese prisoners should be delayed. Subsequently, when certain press dispatches reported the decapitation of said prisoners, I endeavored to obtain information by cabling directly to the taotai at Shanghai, into whose custody the United States consul-general had, by your direction, delivered them. In response, I received from the taotai a cablegram informing me that the prisoners had been forwarded to Nankin with his recommendation that they be punished by sentence of imprisonment, and that the report was without foundation. Upon receipt of this cablegram I had another interview with you, and, in explaining the purport of the telegram, I stated that you might rest assured the prisoners would not suffer harm before the arrival of Colonel Denby; but you must have misunderstood me if you received the impression that my Government had made any promise that the spies should not be tried before the arrival at Peking of Colonel Denby.

I gave you the assurance I did upon the information cabled me by the taotai at Shanghai and upon the belief on my part that his recommendation would be carried out. But when the prisoners were taken to Nankin, it was established by proof that they had furnished information to their Government by means of ciphers, in which seventy-six telegraphic messages in all were sent by them, giving reports of the movement of troops and of military matters in China of the gravest importance; all this in addition to the maps which had been found upon their persons in Shanghai. Further, when they were brought to trial they confessed these facts and boasted that they were serving their country as patriots. In the light of these undoubted proofs of guilt, the lenient recommendation of the taotai of Shanghai was set aside, and, in conformity with the laws of war, they were executed.

In our interviews you seemed to be impressed by the reports sent you from Shanghai that the prisoners were harmless students, and your desire appeared to be that in the excitement of war the forms of law and a fair trial should not be disregarded, and, in the belief that Colonel Denby's presence and the high estimate in which he was held in my country would secure these guarantees, you asked for delay till his arrival at Peking. In view, however, of the unmistakable proofs of guilt and the boasts of the prisoners in the trial, I feel sure you will not regard the course pursued by my Government as unwarranted, much less wanting in deference for you or the Government which you so worthily represent.

Accept, etc.,

YANG YÜ.

No. 49.

Mr. Gresham to Mr. Yang Yü.

DEPARTMENT OF STATE,
Washington, December 27, 1894.

SIR: I had the honor to receive your note of the 6th instant in relation to the interview between us in regard to the trial and execution of the two Japanese spies who were arrested at Shanghai.

If I have deferred my reply longer than I at first intended, it has been because of a disinclination to pursue a discussion on the personal lines which your note suggests.

In my note of the 30th ultimo I stated that there was "reason to believe that the men were executed before the return of Colonel Denby to Peking, and, therefore, in derogation of the voluntary promise which you assured me your Government had made." I fail to find in that statement, or in anything that I have said or written on the subject, any suggestion that "embarrassment might attach to any one in consequence of the action of your Government." In the introduction, therefore, of such a suggestion into the correspondence, I can not hold myself responsible, and I am compelled to state the facts as I understand them, without regard to it.

As to the request I made, that the men might not be tried till the return of the minister of the United States to Peking, our understandings do not differ. You state that when the request was received, you at once communicated it by cable to your Government and strongly expressed the wish that it might be complied with. You also state that, after the early press reports that the men had been decapitated, you told me I might rest assured that the prisoners "would not suffer harm before the arrival of Colonel Denby." In this regard our understandings are not at variance. But we differ in regard to my statement that you informed me your Government had made such a promise.

In this particular I owe it to candor to say that my understanding is at variance with that expressed in your note of the 6th instant. Nor am I alone in this respect. At two of our interviews, Mr. Rockhill, the Third Assistant Secretary of State, was, as you are aware, present, and his understanding clearly accords with mine as to what occurred. It is not my intention to intimate that your language was calculated to create an impression for which there was no actual foundation; but as your expressions were communicated to me, I am not at liberty to admit that they did not convey the meaning which I ascribed to them.

I should have been glad to refrain from any discussion of differences as to what occurred at our interview; but I can not permit to remain unanswered, in the files of the Department, a communication which might be thought to imply that I could have any motive, other than those of delicacy and propriety, for shrinking from such a discussion.

Accept, sir, etc.,

W. Q. GRESHAM.

No. 50.

Mr. Yang Yü to Mr. Gresham.

CHINESE LEGATION,
Washington, December 31, 1894.

SIR: I have the honor to acknowledge the receipt of your note of the 27th instant, in which you state your understanding of the interviews which took place between us respecting the Japanese spies arrested at Shanghai.

I must express to you my sincere regret if in my note of the 6th instant I used any expression which might be construed as an improper intimation. If my language expressed any such idea, it was a regrettable inadvertence on my part, as it was farthest from my intention so

to do. I have no doubt you have correctly stated your understanding of the interviews as conveyed through the interpreters, and I have no disposition to raise any controversy on the subject. Your whole conduct in this matter has given evidence of such a high spirit of rectitude and friendship for my Government that it would be ingratitude on my part to raise any issue of fact with you.

With this opportunity I desire to recognize the frankness and cordiality which has at all times marked your intercourse with me, and to assure you that it will always be my earnest desire to merit your confidence and esteem.

Accept, etc.,

YANG YÜ.

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